

MONTANA LEGISLATIVE HISTORY

Chapter 631 19 93

Bill H 335 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 2/10 ✓ c

_____ c

_____ c

_____ c

Date Out

2/16 ✓ c

S. Committee on Judiciary

Hearing Date(s) 3/18 ✓ c

date out 3/27 ✓ c (tabled)

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Free conference committee 4/20/93

HB 333

INTRODUCED BY COBB

EXTEND UTILIZATION FEE ON NURSING HOMES TO INCLUDE BED DAYS
REIMBURSED BY ALL PAYERSBY REQUEST OF DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES

1/23	INTRODUCED		
1/23	REFERRED TO TAXATION		
1/23	FISCAL NOTE REQUESTED		
1/23	FIRST READING		
1/29	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/15	HEARING		
3/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	90	9
3/24	3RD READING PASSED	80	19
	TRANSMITTED TO SENATE		
3/26	FIRST READING		
3/26	REFERRED TO FINANCE & CLAIMS		
4/05	HEARING		
4/07	COMMITTEE REPORT—BILL CONCURRED		
4/08	2ND READING CONCURRED	47	0
4/12	3RD READING CONCURRED	44	4
	RETURNED TO HOUSE		
4/21	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 558		
	EFFECTIVE DATE: 07/01/93—SECTIONS 1-5		
	EFFECTIVE DATE: 04/28/93—SECTION 6		

HB 334

INTRODUCED BY ELLIS, ET AL.

REVISE DEFINITION OF AGRICULTURAL LAND FOR PROPERTY TAX
PURPOSES

1/23	INTRODUCED
1/23	REFERRED TO TAXATION
1/23	FISCAL NOTE REQUESTED
1/23	FIRST READING
1/30	FISCAL NOTE RECEIVED
2/02	REVISED FISCAL NOTE RECEIVED
2/04	FISCAL NOTE PRINTED
2/12	HEARING
2/12	REVISED FISCAL NOTE PRINTED
3/18	TABLED IN COMMITTEE

HB 335

INTRODUCED BY TOOLE, ET AL.

GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS

BY REQUEST OF DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES

1/23	INTRODUCED		
1/23	REFERRED TO JUDICIARY		
1/23	FIRST READING		
2/12	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	94	3
2/23	3RD READING PASSED	94	5

	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO JUDICIARY		
3/18	HEARING		
3/29	TABLED IN COMMITTEE		
3/30	TAKEN FROM COMMITTEE AND		
	PLACED ON 2ND READING	38	11
3/31	2ND READING CONCURRED AS AMENDED	41	7
4/01	3RD READING CONCURRED	38	10
	RETURNED TO HOUSE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	95	3
4/12	RECONSIDERED PREVIOUS ACTION		
4/14	2ND READING AMENDMENTS NOT CONCURRED	91	6
4/15	CONFERENCE COMMITTEE APPOINTED		
4/15	CONFERENCE COMMITTEE DISSOLVED		
4/15	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	93	6
4/22	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	97	3
	SENATE		
4/19	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/21	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	49	0
4/22	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	0
4/28	SIGNED BY SPEAKER		
4/28	SIGNED BY PRESIDENT		
4/29	TRANSMITTED TO GOVERNOR		
5/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 631		
	EFFECTIVE DATE: 10/01/93		

HB 336

INTRODUCED BY BIRD, ET AL.

CHANGE PROOF OF AUTO INSURANCE CERTIFICATION LAW

1/23	INTRODUCED		
1/23	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/23	FIRST READING		
2/03	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	95	1
2/19	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/16	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED		
3/22	2ND READING CONCURRED	31	16
3/23	3RD READING CONCURRED	39	10
	RETURNED TO HOUSE		
3/27	SIGNED BY SPEAKER		
3/31	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 278		
	EFFECTIVE DATE: 10/01/93		

1 House BILL NO. 335
 2 INTRODUCED BY Handwritten Name
 3 BY REQUEST OF THE DEPARTMENT OF Shue
 4 SOCIAL AND REHABILITATION SERVICES Nelson
 5 Yellowknife
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
 7 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND
 8 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;
 9 PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING
 10 FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT
 11 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND
 12 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE
 13 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE
 14 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;
 15 EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING
 16 PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE
 17 CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO
 18 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON
 19 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE
 20 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES
 21 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO
 22 DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE
 23 OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE
 24 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF
 25 LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY

1 PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302,
 2 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,
 3 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,
 4 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,
 5 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND
 6 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

8 WHEREAS, it is necessary to draft a composite bill
 9 containing unrelated sections in order to present the
 10 proposed program improvements in a single, comprehensive
 11 bill that promotes the needs of legislative energy,
 12 efficiency, and economy by limiting the number of possible
 13 bills and by reducing the need for hearings and readings on
 14 those bills.

15 THEREFORE, the Legislature finds it appropriate to enact
 16 the following legislation.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the

principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 2. Section 25-9-301, MCA, is amended to read:

"25-9-301. Docketing of judgment -- lien -- expiration.

(1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him the judgment debtor at the time or which he the judgment debtor may afterward acquire until the lien ceases. The Except as

provided in subsection (3), the lien continues for 6 years unless the judgment ~~be~~ is previously satisfied.

(3) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 3. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county -- lien -- expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such that county, owned by him the judgment debtor at the time or which he the judgment debtor may afterward and before the lien expires acquire. The Except as provided in subsection (2), the lien continues for 6 years unless the judgment ~~be~~ is previously satisfied.

(2) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 4. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal court -- lien -- expiration. (1) A transcript of the

original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of ~~said~~ court, may be filed with the district court clerk of any county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such the county, owned by him the judgment debtor at the time or which he the judgment debtor may afterward and before the lien expires acquire. The Except as provided in subsection (2), the lien ~~shall---continue~~ continues for 6 years unless the judgment ~~be~~ is previously satisfied.

(2) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 5. Section 25-13-101, MCA, is amended to read:

"25-13-101. Time limit for issuing execution. (1) The Except as provided in subsection (2), the party in whose favor the judgment is given may, at any time within 6 years after the entry thereof, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child or spousal support, the party in whose favor the judgment is given may, at any time within 10 years after the termination

1 of the support obligation, have a writ of execution issued
 2 for its enforcement."

3 **Section 6.** Section 27-2-201, MCA, is amended to read:

4 "27-2-201. **Actions upon judgments.** (1) The Except as
 5 provided in subsection (3), the period prescribed for the
 6 commencement of an action upon a judgment or decree of any
 7 court of record of the United States or of any state within
 8 the United States is within 10 years.

9 (2) The period prescribed for the commencement of an
 10 action upon a judgment or decree rendered in a court not of
 11 record is within 5 years. The cause of action is **deemed**
 12 considered, in such that case, to have accrued when final
 13 judgment was rendered.

14 (3) The period prescribed for the commencement of an
 15 action to collect past-due child or spousal support that has
 16 accrued after October 1, 1993, under an order entered by a
 17 court of record or administrative authority is within 10
 18 years of the termination of support obligation."

19 **Section 7.** Section 27-2-211, MCA, is amended to read:

20 "27-2-211. **Actions to enforce penalty or forfeiture or**
 21 **other statutory liability.** (1) Within 2 years is the period
 22 prescribed for the commencement of an action upon:

23 (a) a statute for a penalty or forfeiture when the
 24 action is given to an individual or to an individual and the
 25 state, except when the statute imposing it prescribes a

1 different limitation;

2 (b) a statute or an undertaking in a criminal action
 3 for a forfeiture or penalty to the state;

4 (c) a liability created by statute other than:

5 (i) a penalty or forfeiture; or

6 (ii) a statutory debt created by the payment of public
 7 assistance.

8 (2) The period prescribed for the commencement of an
 9 action by a municipal corporation for the violation of any
 10 city or town ordinance is within 1 year.

11 (3) Notwithstanding any other provision of this
 12 chapter, actions against directors or stockholders of a
 13 corporation to recover a penalty or forfeiture imposed or to
 14 enforce a liability created by law must be brought within 3
 15 years after the discovery by the aggrieved party of the
 16 facts upon which the penalty of forfeiture attached or the
 17 liability was created.

18 (4) Unless fraud is involved or unless a support
 19 obligation has been entered, an action to enforce a
 20 statutory debt created by the payment of public assistance
 21 must be brought within 5 years from the date the debt
 22 arises. If fraud is involved, an action must be brought
 23 within 5 years of the discovery of the fraud. If a support
 24 obligation has been entered, an action must be brought
 25 within 10 years of the termination of support obligation."

Section 8. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
 - (b) the financial resources of the custodial parent;
 - (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
 - (d) the physical and emotional condition of the child and his the child's educational and medical needs;
 - (e) the financial resources and needs of the noncustodial parent;
 - (f) the age of the child;
 - (g) the cost of day care for the child;
 - (h) any custody arrangement that is ordered or decided upon; and
 - (i) the needs of any person, other than the child, whom either parent is legally obligated to support.
- (3) (a) Whenever a court issues or modifies an order

concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or

entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether

temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support

1 obligation must include a provision requiring the parent
 2 obligated to pay support to inform the court and, if the
 3 department of social and rehabilitation services is
 4 providing services under Title IV-D of the Social Security
 5 Act for the enforcement of the judgment, decree, or order,
 6 the department, of the following:

7 (a) the name and address of the parent's current
 8 employer;

9 (b) whether the parent has access to health insurance
 10 through an employer or other group; and

11 (c) if insurance coverage is available, the health
 12 insurance policy information.

13 (7) If the department of social and rehabilitation
 14 services is providing or later provides support enforcement
 15 services under Title IV-D of the Social Security Act, each
 16 district court order or modification of an order must
 17 contain a statement providing that the noncustodial parent,
 18 without further order of the court, is required to obtain
 19 and maintain health insurance coverage as provided in
 20 40-5-208. Failure to include a warning statement in the
 21 judgment or order does not preclude the imposition of
 22 sanctions under 40-5-208.

23 (8) Each district court judgment, decree, or order
 24 establishing a final child support obligation under this
 25 part and each modification of a final order for child

1 support must contain a statement that the order is subject
 2 to review and modification by the department of social and
 3 rehabilitation services upon the request of the department
 4 or a party under 40-5-271 through 40-5-273 when the
 5 department is providing services under Title IV-D of the
 6 Social Security Act for the enforcement of the order.

7 (9) Child support ordered on behalf of a minor child
 8 must be paid to:

9 (a) the legal custodian of the minor child;

10 (b) (i) any other person, organization, or agency
 11 having legal physical custody of the minor child under a
 12 legal assignment of rights; or

13 (ii) the court for the benefit of the minor child;

14 (c) any other person or agency designated as caretaker
 15 of the minor child by agreement of the legal custodian; or

16 (d) any assignee or other person, organization, or
 17 agency authorized to receive or collect child support."

18 **Section 9.** Section 40-5-118, MCA, is amended to read:

19 **"40-5-118. State information agency.** (1) The state
 20 department of social and rehabilitation services is
 21 designated as the state information agency under this part.

22 (2) It shall:

23 (a) compile a list of the courts and their addresses in
 24 this state having jurisdiction under this part and transmit
 25 it to the state information agency of every other state

which that has adopted this or a substantially similar law; and Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit furnish, upon request, copies thereof of the list promptly to every court in this state having jurisdiction under this part; and.

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and

requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

Section 10. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(a)(i) support rights are assigned under 53-2-613;

1 ~~(b)~~(ii) a public assistance payment has been made;
 2 ~~(c)~~(iii) the department is providing support enforcement
 3 services under 40-5-203; or
 4 ~~(d)~~(iv) the department has received a referral for
 5 interstate services from an agency of another state under
 6 the provisions of the Uniform Reciprocal Enforcement of
 7 Support Act or under Title IV-D of the Social Security Act.
 8 (b) Child may not be construed to limit the ability of
 9 the department to enforce a support order according to its
 10 terms when the order provides for support to extend beyond
 11 the child's 18th birthday.
 12 (3) "Department" means the department of social and
 13 rehabilitation services.
 14 (4) "Director" means the director of the department of
 15 social and rehabilitation services or ~~his~~ the director's
 16 authorized representative.
 17 (5) "Guidelines" means the child support guidelines
 18 adopted pursuant to 40-5-209.
 19 (6) "Hearing officer" or "hearing examiner" means the
 20 hearing officer appointed by the department for the purposes
 21 of this chapter.
 22 (7) "Need" means the necessary costs of food, clothing,
 23 shelter, and medical care for the support of a child or
 24 children.
 25 (8) "Obligee" means:

1 (a) a person to whom a duty of support is owed and who
 2 is receiving support enforcement services under this part;
 3 or
 4 (b) a public agency of this or another state having the
 5 right to receive current or accrued support payments.
 6 (9) "Obligor" means a person, including an alleged
 7 father, who owes a duty of support.
 8 (10) "Parent" means the natural or adoptive parent of a
 9 child.
 10 (11) "Paternity blood test" means a test that
 11 demonstrates through examination of genetic markers either
 12 that an alleged father is not the natural father of a child
 13 or that there is a probability that an alleged father is the
 14 natural father of a child. Paternity blood tests may include
 15 but are not limited to the human leukocyte antigen test and
 16 DNA probe technology.
 17 (12) "Public assistance" means any type of monetary or
 18 other assistance for a child, including medical and foster
 19 care benefits. The term includes payments to meet the needs
 20 of a relative with whom the child is living, if assistance
 21 has been furnished with respect to the child by a state or
 22 county agency of this state or any other state.
 23 (13) "Support debt" or "support obligation" means the
 24 amount created by:
 25 (a) the failure to provide support to a child under the

1 laws of this or any other state or a support order; or

2 (b) a support order for spousal maintenance if the
3 judgment or order requiring payment of maintenance also
4 contains a judgment or order requiring payment of child
5 support for a child of whom the person awarded maintenance
6 is the custodial parent.

7 (14) "Support order" means an order providing a
8 determinable amount for temporary or final periodic payment
9 of funds for the support of a child, that is issued by:

10 (a) a district court of this state;

11 (b) a court of appropriate jurisdiction of another
12 state, Indian tribe, or foreign country;

13 (c) an administrative agency pursuant to proceedings
14 under this part; or

15 (d) an administrative agency of another state, Indian
16 tribe, or foreign country with a hearing function and
17 process similar to those of the department under this part.

18 (15) "IV-D" means the provisions of Title IV-D of the
19 Social Security Act and the regulations promulgated
20 thereunder."

21 **Section 11.** Section 40-5-202, MCA, is amended to read:

22 "40-5-202. Department of social and rehabilitation
23 services -- powers and duties regarding collection of
24 support debt. (1) The department may take action under the
25 provisions of this part, the abandonment or nonsupport

1 statutes, the Uniform Parentage Act established in Title 40,
2 chapter 6, part 1, and other appropriate state and federal
3 statutes to ~~ensure--that--the--parent--or--other--person~~
4 ~~responsible-pays-for-the-care,-support,-or-maintenance-of--a~~
5 child provide IV-D services if the department:

6 (a) receives a referral from the department of social
7 and rehabilitation services or the department of family
8 services on behalf of the child;

9 (b) is providing child support enforcement services
10 under 40-5-203; or

11 (c) receives an interstate referral, whether under the
12 Revised Uniform Reciprocal Enforcement of Support Act or an
13 interstate action by a Title IV-D agency of another state.

14 (2) ~~if--the--department--is--providing--child--support~~
15 ~~enforcement--services--for--a--child--under--this--part,-the~~
16 ~~department-becomes-trustee-of-any-cause--of--action--of--the~~
17 ~~child--or-the-obligee-to-recover-support-due-to-the-child-or~~
18 ~~obligee-from-the--obligor--The--department--may--bring--and~~
19 ~~maintain--the--action--in-its-own-name-or-in-the-name-of-the~~
20 ~~obligee-~~ A verified statement, filed by the department, that
21 it is providing services is prima facie evidence of its
22 authority to act. The department may initiate, participate
23 in, or exercise any remedy available in a judicial or an
24 administrative action on the same basis as any other party.

25 (3) The department has the power of attorney to act in

1 the name of any obligee to endorse and cash any and all
2 drafts, checks, money orders, or other negotiable
3 instruments received by the department on behalf of a child.

4 ~~(4) For purposes of prosecuting any civil action, the~~
5 ~~department is a real party in interest if it is providing~~
6 ~~child support enforcement services under this part. The~~
7 ~~department is a party to and must be afforded notice and an~~
8 ~~opportunity to participate in any proceeding relating to~~
9 ~~paternity or to the establishment, enforcement, or~~
10 ~~modification of a support obligation, whether initiated by~~
11 ~~the obligee, the obligor, or the child. No obligee A~~
12 ~~recipient of services may not act to prejudice the rights of~~
13 ~~the department while such the services are being provided.~~

14 (5) If child support enforcement services are being or
15 have been provided under this part, no an agreement between
16 any obligee and any obligor either relieving an obligor of
17 any duty of support or purporting to settle past, present,
18 or future support obligations either as settlement or
19 prepayment may not act to reduce or terminate any rights of
20 the department to recover from the obligor for support debt
21 provided unless the department has consented to the
22 agreement in writing.

23 (6) The department may petition a court or an
24 administrative agency for modification of any order on the
25 same basis as a party to that action is entitled to do.

1 (7) The department is subrogated to the right of the
2 child or obligee to maintain any civil action or execute any
3 administrative remedy available under the laws of this or
4 any other state to collect a support debt. This right of
5 subrogation is in addition to and independent of the
6 assignment under 53-2-613 and the support debt created by
7 40-5-221.

8 (8) If public assistance is being or has been paid, the
9 department is subrogated to the debt created by a support
10 order and any money judgment is considered to be in favor of
11 the department. This subrogation is an addition to any
12 assignment made under 53-2-613 and applies to the lesser of:

- 13 (a) the amount of public assistance paid; or
- 14 (b) the amount due under the support order.

15 (9) The department may adopt and enforce the rules
16 necessary to carry out the provisions of this part.

17 (10) The department, for the purposes mentioned in this
18 part, through its director or the director's authorized
19 representatives, may administer oaths to certify official
20 acts and records, issue subpoenas, and compel witnesses and
21 the production of books, accounts, documents, and evidence.

22 (11) When a person is required to give notice to, serve,
23 or provide a written response to the department in a
24 proceeding concerning the establishment or enforcement of
25 child support, the notice, service, or response must be made

1 to the department's child support enforcement division."

2 **Section 12.** Section 40-5-206, MCA, is amended to read:

3 "40-5-206. Central unit for information and
4 administration -- cooperation enjoined -- availability of
5 records. (1) The department shall establish a central unit
6 to serve as a registry for the receipt of information, for
7 answering interstate inquiries concerning deserting parents,
8 for receiving and answering requests for information made by
9 consumer reporting agencies under 40-5-261, to coordinate
10 and supervise departmental activities in relation to
11 deserting parents, and to assure effective cooperation with
12 law enforcement agencies.

13 (2) If services are provided to a child under this
14 part, the department may request and, notwithstanding any
15 statute making the information confidential, all state,
16 county, and city agencies, officers, and employees and all
17 corporations, partnerships, associations, organizations, or
18 individuals doing business in the state must provide on
19 request any information, if known, concerning the--location,
20 income,--and-assets-of an obligor, including:

21 (a) name;

22 (b) address of obligor's residence;

23 (c) date of birth;

24 (d) social security number;

25 (e) wages or other income;

1 (f) number of dependents claimed for state and federal
2 income tax withholding purposes;

3 (g) name and address of employer;

4 (h) name and address of any financial institution
5 maintaining an account for the obligor;

6 (i) account number, account balances, account type, and
7 the name under which the obligor has an interest in an
8 account or deposit with a financial institution;

9 (j) address of any real property owned by the obligor;
10 and

11 (k) any other asset in which the obligor may have an
12 interest, including the extent, nature, and value of the
13 interest.

14 (3) Except-as-provided-in-40-5-261--and--rules--adopted
15 under--40-5-262,--any--records--established--pursuant-to-the
16 provisions--of--this--section--are--available--only--to--the
17 department, A person who knowingly fails or refuses to
18 provide information or who knowingly provides false or
19 incorrect information concerning an obligor, in response to
20 a request by the department, is subject to citation for
21 contempt under the provisions of this part.

22 (4) Any information obtained by the department during
23 the course of a child support investigation that is
24 confidential at the source must be treated by the department
25 as confidential and must be safeguarded accordingly.

(5) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act."

Section 13. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support -- obligation enforcement -- sanctions. (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that

the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than \$100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than \$100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. ~~Such~~ The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant

for distraint provided for in ~~40-5-241~~ 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 14. Section 40-5-210, MCA, is amended to read:

"~~40-5-210. Standardized fee schedule -- rules.~~ (1) The department ~~shall-by-rule-establish-a-standardized-schedule-of-fees-for-the-recovery-of-administrative-costs-and-expenses-of-child-support-enforcement--The-fees-may-be-recovered-from-an-obligor-if-the-obligor's-failure-or-refusal-to-support-a-child-makes-it-necessary-for-the-department-to-provide-child-support-enforcement-services-under-this-part--The-fees-must-be-commensurate-with-costs-or-an-average-of-the-expenditures-related-to-specific-or-routine-activities~~ may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is

1 based on the applicant's income level.

2 (2) The department may charge a handling fee for each
3 payment of support collected on behalf of any obligee who is
4 not a recipient of public assistance. The department may
5 withhold the fee from the support payment before
6 distribution to the obligee.

7 (3) The department may charge an obligor a late payment
8 fee for each late payment of support collected on behalf of
9 any obligee who is not a recipient of public assistance.

10 (4) The department may establish a fee schedule in
11 order to recover costs and expenses in excess of the
12 application, handling, and late fees. The fees must be
13 commensurate with costs or an average of the expenditures
14 related to specific or routine activities.

15 (a) The department shall develop procedures for
16 determining whether it is appropriate for either the obligor
17 or the obligee to be responsible for payment of the fee. In
18 developing the procedures, the department shall consider
19 federal regulations promulgated under Title IV-D of the
20 Social Security Act.

21 (b){2} In an action to establish paternity or to
22 establish or enforce a child support obligation, whether in
23 district court or by administrative process, the department
24 must be awarded costs in the amount established in the fee
25 schedule as part of any judgment, decree, or order in--which

1 whenever the department:

2 (i) is the a prevailing party in the action; or

3 (ii) is not a party but incurs expenses and costs
4 related to the action.

5 ~~{3}--Fees-awarded-under-this-section-are-in--the--nature~~
6 ~~of-child-support-and-are-collectible-in-the-same-manner-as-a~~
7 ~~support--order--The-fee-award-may-be-collected-separately-or~~
8 ~~added-to-and-collected-with-any-balance--due--on--a--support~~
9 ~~debt--~~

10 ~~{4}--Collection--of--a--fee--award--may--not--reduce-any~~
11 ~~current-child-support-payment-due-the-obligee--~~

12 ~~{5}--Arrearage-amounts-collected-that-include-a-fee-must~~
13 ~~be-allocated-as-follows--~~

14 ~~{a}--If-the-obligee-is-a-recipient-of-public-assistance,~~
15 ~~the-amount-must-be-allocated-first-to-satisfy-the-fee--~~

16 ~~{b}--If--the--obligee--is--not--a--recipient--of--public~~
17 ~~assistance--the-first-10%--of--each-amount-collected--must--be~~
18 ~~allocated-to-satisfy-the-fee--~~

19 (5) The department may collect the fees awarded under
20 this section by one of the following means:

21 (a) if the fee is owed by an obligor, the fee may be:

22 (i) collected through any remedy available to the
23 department for the collection of child support arrearages;

24 or

25 (ii) deducted from any payments made by the obligor

before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(7) The department may adopt rules necessary to implement fee schedules under this section.

(8) The department may retain any fees collected under this section to help offset administrative costs and expenses of operating the child support enforcement program. For this purpose, the fees are statutorily appropriated as provided in 17-7-502."

Section 15. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance -- warrant for distraint --

bond to release warrant -- action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~ or left, or has removed or is about to remove, secrete, waste, or otherwise dispose of property ~~which~~ that could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the fair hearing or ~~thereafter~~ after the hearing, whether or not appealed. ~~No-further~~ Further action may not be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or ~~thereafter~~ after the hearing, and in ~~such~~ that case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing."

Section 16. Section 40-5-226, MCA, is amended to read:

1 "40-5-226. Administrative hearing -- nature -- place --
2 time -- determinations -- failure to appear -- entry of
3 final decision and order. (1) The administrative hearing is
4 defined as a "contested case".

5 (2) At the discretion of the hearing officer, the
6 administrative hearing may be held:

7 (a) in the county of residence or other county
8 convenient to the obligor or obligee; or

9 (b) in the county in which the department or any of its
10 offices are located.

11 (3) If a hearing is requested, it must be scheduled
12 within 20 days.

13 (4) The hearing officer shall determine the liability
14 and responsibility, if any, of the obligor under the notice
15 and shall enter a final decision and order in accordance
16 with such the determination.

17 (5) If the obligor fails to appear at the hearing or
18 fails to timely request a hearing, the hearing officer, upon
19 a showing of valid service, shall enter a decision and order
20 declaring the amount stated in the notice to be final.

21 (6) In a hearing to determine financial responsibility,
22 the monthly support responsibility must be determined in
23 accordance with the evidence presented and with reference to
24 the scale of suggested minimum contributions under 40-5-214.
25 The hearing officer is not limited to the amounts stated in

1 the notice.

2 (7) Within 20 days of the hearing, the hearing officer
3 shall enter a final decision and order. The determination of
4 the hearing officer constitutes a final agency decision,
5 subject to judicial review under 40-5-253 and the provisions
6 of the Montana Administrative Procedure Act.

7 (8) A support order entered under this part must
8 contain a statement that the order is subject to review and
9 modification by the department upon the request of the
10 department or a party under 40-5-271 through 40-5-273 when
11 the department is providing services under IV-D for the
12 enforcement of the order.

13 (9) A support debt determined pursuant to this section
14 is subject to collection action without further necessity of
15 action by the hearing officer.

16 (10) A support debt or a support responsibility
17 determined under this part by reason of the obligor's
18 failure to request a hearing under this part or failure to
19 appear at a scheduled hearing may be vacated, upon the
20 motion of an obligor, by the hearing officer within the time
21 provided and upon a showing of any of the grounds enumerated
22 in the Montana Rules of Civil Procedure.

23 (11) Unless the hearing officer makes a written
24 exception under 40-5-315 or 40-5-411 and the exception is
25 included in the support order, every order establishing a

child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(12) For the purposes of income withholding provided for in subsection (11), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(13) The hearing officer may:

(a) compel obedience to the hearing officer's orders, judgments, and process and to any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the

1 payor fails to take the required action.

2 (15) An affidavit of the facts constituting a contempt
 3 must be submitted to the hearing officer, who shall review
 4 it to determine whether there is cause to believe that a
 5 contempt has been committed. If cause is found, the hearing
 6 officer shall issue a citation requiring the alleged
 7 contemnor to appear and show cause why the alleged contemnor
 8 should not be determined to be in contempt and required to
 9 pay a penalty of not more than \$500 for each count of
 10 contempt. The citation, along with a copy of the affidavit,
 11 must be served upon the alleged contemnor either by personal
 12 service or by certified mail. All other interested persons
 13 may be served a copy of the citation by first-class mail.

14 (16) At the time and date set for hearing, the hearing
 15 officer shall proceed to hear witnesses and take evidence
 16 regarding the alleged contempt and any defenses to the
 17 contempt. If the alleged contemnor fails to appear for the
 18 hearing, the hearing may proceed in the alleged contemnor's
 19 absence. If the hearing officer finds the alleged contemnor
 20 in contempt, the hearing officer may impose a penalty of not
 21 more than \$500 for each count found. The hearing officer's
 22 decision constitutes a final agency decision, subject to
 23 judicial review under 40-5-253 and subject to the provisions
 24 of Title 2, chapter 4.

25 (17) An amount imposed as a penalty may be collected by

1 any remedy available to the department for the enforcement
 2 of child support obligations, including warrant for
 3 distrainment pursuant to 40-5-247, income withholding pursuant
 4 to Title 40, chapter 5, part 4, and state debt offset,
 5 pursuant to Title 17, chapter 4, part 1. The department may
 6 retain any penalties collected under this section to offset
 7 the costs of administrative hearings conducted under this
 8 chapter.

9 (18) The money collected as a penalty under this section
 10 is statutorily appropriated, as provided in 17-7-502, to the
 11 department to help offset expenditures for administrative
 12 hearings conducted under this chapter."

13 **Section 17.** Section 40-5-227, MCA, is amended to read:

14 **"40-5-227. Filing and docketing of final orders --**
 15 **orders effective as district court decrees. (1) An abstract**
 16 **of any final administrative order under this chapter may be**
 17 **filed in the office of the clerk of the district court of**
 18 **any county of Montana. The order, if approved, must be**
 19 **docketed in the judgment docket of the district court. The**
 20 **properly filed and docketed order has all the force, effect,**
 21 **and attributes of a docketed order or decree of the district**
 22 **court, including but not limited to lien effect and**
 23 **enforceability by supplemental proceedings, writs of**
 24 **execution, and contempt of court proceedings.**

25 **(2) A final administrative order that determines and**

sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for ~~any--such~~ a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to ~~40-5-241~~ 40-5-247."

Section 18. Section 40-5-232, MCA, is amended to read:

"**40-5-232. Establishment of paternity -- notice of paternity determination -- contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish ~~his~~ paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237,

if a man acknowledges ~~his~~ paternity of a child in writing and ~~such the~~ acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not ~~he~~ the parent is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve ~~such the~~ notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination ~~shall~~ must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which

conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he the alleged father is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) ~~he may request a trial in district court to determine paternity before the final administrative decision is made~~ upon receipt of the blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the

department from serving notice on any other alleged father of the same child."

Section 19. Section 40-5-242, MCA, is amended to read:

"40-5-242. Civil Notice of support lien -- civil liability upon failure to honor support lien or to comply with warrant or-to-honor-assignment-of-wages for distraint.
(1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law.

(2) Except as provided in subsection (3), A a person, firm, corporation, association, political subdivision, or department of the state or entity is liable to the department in an amount equal to 100% of the value of the a support debt that is the basis of the distraint or assignment of wages lien or warrant for distraint or the value of the-distrainted real or personal property subject to a support lien or distraint by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

~~{1}--fails--or--refuses--to-deliver-property-pursuant-to
the-order;~~

~~{2}{a} pays over, releases, sells, transfers, or
conveys real or personal property subject to a support lien,
to or for the benefit of the obligor, after the person or
entity receives actual notice of filing of the support lien;
or~~

~~{3}{b} fails or refuses to surrender upon demand
property distrained--under--40-5-241 of an obligor when
presented with a warrant for distraint by a sheriff or
levying officer under the provisions of 40-5-247; or.~~

~~{4}--fails-or-refuses-to-honor-an-assignment--of--wages
presented-by-the-department;~~

(3) A person or entity is not liable to the department
under this section when:

(a) a written release or waiver of the support lien or
warrant for distraint issued by the department has been
delivered to the person or entity;

(b) a determination has been made in an adjudicative
proceeding, either administrative or judicial, that a
support lien does not exist or that the lien has been
satisfied; or

(c) the property subject to a support lien has been
transferred to, paid over to, or repossessed by a person or
entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the
obligor to purchase real property; or

(iii) a perfected purchase money security interest, as
defined by 30-9-107."

Section 20. Section 40-5-247, MCA, is amended to read:

~~"40-5-247. Filing-warrant-with-district-court---effect
of--filing-----release Warrant for distraint -- effect --
satisfaction of support lien -- redemption. {1}--After
issuing-a-warrant,-the-department-may-file-the-warrant--with
the--clerk--of--a--district--court--The-clerk-shall-file-the
warrant-in--the--judgment--docket,-with--the--name--of--the
delinquent-obligor-listed-as-the-judgment-debtor;~~

~~{2}--Upon--filing--the--warrant,-there-is-a-lien-against
all-real-and-personal-property--of--the--delinquent--obligor
located--in--the--county--where--the--warrant--is--filed--The
resulting-lien-is-treated-in-the-same-manner-as--a--properly
docketed--judgment--lien,-and--the--department--may-collect
delinquent-child-support-and-enforce-the-lien--in--the--same
manner-as-a-judgment-is-enforced--The-lien-is-for-the-amount
indicated-on-the-warrant-plus-accrued-interest-from-the-date
of-the-warrant;~~

(1) The department may issue a warrant for distraint to
execute support liens established by [section 28] or to
enforce and collect any money obligation authorized under

1 this chapter.

2 (a) The warrant must be an order, under official seal
 3 of the department, directed to a sheriff of any county of
 4 the state or to any levying officer authorized by law to
 5 enforce a district court judgment. The order must command
 6 the recipient to levy upon and sell nonexempt real and
 7 personal property to satisfy the support lien upon which the
 8 warrant is based.

9 (b) A warrant must be signed by the director of the
 10 department or the director's designee.

11 (c) The warrant must be for the amount of the support
 12 lien or the amount of any other money obligation determined
 13 under this chapter, including interest and fees, if any.

14 (d) A warrant for distraint has the same effect as a
 15 writ of execution issued by a district court to enforce
 16 money judgments.

17 †3†(2) (a) A copy--of--the--filed warrant for distraint
 18 may be sent by the department to the sheriff or authorized
 19 agent levying officer. Upon receipt of a--copy--of the filed
 20 warrant, the sheriff or authorized--agent levying officer
 21 shall proceed to execute upon the warrant in the same manner
 22 as prescribed for execution upon a judgment.

23 (b) A sheriff or agent levying officer shall return a
 24 warrant, along with any funds collected, within 90 days of
 25 the receipt of the copy-of-the warrant.

1 (c) Funds resulting from execution upon the warrant
 2 must first be applied to the sheriff's or levying officer's
 3 costs, any superior liens, the support lien, or other money
 4 obligation and to any inferior liens. Any amounts in excess
 5 of this distribution must be paid to the obligor.

6 †e†(d) If the warrant is returned not fully satisfied,
 7 the department has the same remedies to collect the
 8 deficiency as are available for any civil judgment.

9 (3) A sheriff's or levying officer's levy against real
 10 and personal property of the obligor is not limited to
 11 property in possession of persons or other entities given
 12 notice of a support lien under 40-5-242.

13 (4) (a) Upon receiving payment in full of the unpaid
 14 child--support warrant amount plus penalty and fees, if any,
 15 and accumulated interest, the department shall release the
 16 lien warrant.

17 (b) Upon receiving partial payment of the unpaid child
 18 support warrant amount or if the department determines that
 19 a release or partial release of the lien warrant will
 20 facilitate the collection of the unpaid amount, penalty, and
 21 interest, the department may release or may partially
 22 release the lien--acquired--by--filing--the warrant for
 23 distraint. The department may release the lien warrant if it
 24 determines that the lien warrant is unenforceable.

25 (5) An obligor or other person or entity having an

interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this

section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

{5}(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 21. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after ~~6-years-from-the-date-a-support-debt-was-incurred~~ 10 years from the date of termination of the support obligation, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. ~~No--proceedings A proceeding~~ or action under the provisions of this part may not be begun after expiration of the 6-year 10-year period to institute collection of a support debt. ~~Nothing-herein~~ This part may not be construed to render invalid or

1 nonactionable a warrant for distraint ~~filed with the clerk~~
 2 ~~of court~~ issued by the department prior to the expiration of
 3 the ~~6-year~~ 10-year period or an assignment of earnings
 4 executed prior to the expiration of the ~~6-year~~ 10-year
 5 period."

6 **Section 22.** Section 40-5-415, MCA, is amended to read:

7 **"40-5-415. Order to withhold income -- rules.** (1) When
 8 the requirements of this part have been met, the department
 9 shall serve an order or modification order to withhold and
 10 deliver income upon any payor or combination of payors. The
 11 order must:

12 (a) direct the payor and successor payors to withhold
 13 from the obligor's income each month the amount specified in
 14 the order if sufficient funds are available;

15 (b) direct the payor to deliver the amount withheld to
 16 the department in the same month in which the funds were
 17 withheld;

18 (c) state that the order is binding on the payor until
 19 further notice by the department;

20 (d) state the rights and duties of the payor under this
 21 part; and

22 (e) include a statement that the obligor is required
 23 under a support order to provide health insurance coverage
 24 for the obligor's child, if appropriate.

25 (2) An order or modification order to withhold and

1 deliver the obligor's income made under this section is
 2 binding upon the payor immediately upon service of the order
 3 upon the payor. Service of the order or modification order
 4 to withhold may be made either personally or by certified
 5 mail.

6 (3) Whenever there is more than one payor, the
 7 department may, in its discretion, apportion the total
 8 amount to be withheld each month among payors. Whenever an
 9 obligor's income is subject to withholding for more than one
 10 obligee, the department may consolidate the payments
 11 received each month and distribute the income among the
 12 obligees according to department rules."

13 **Section 23.** Section 40-6-116, MCA, is amended to read:

14 **"40-6-116. Judgment or order.** (1) The judgment or order
 15 of the court determining the existence or nonexistence of
 16 the parent and child relationship is determinative for all
 17 purposes.

18 (2) If the judgment or order of the court is at
 19 variance with the child's birth certificate, the court shall
 20 order that a substitute birth certificate be issued under
 21 40-6-123.

22 (3) (a) The judgment or order may contain any other
 23 provision directed against the appropriate party to the
 24 proceeding concerning the custody and guardianship of the
 25 child, visitation privileges with the child, the furnishing

of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily ~~shall~~ must be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court ~~deems~~ considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including ~~his~~ medical needs;

(b) the standard of living and circumstances of the

parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and

1 guidelines to determine child support, it shall state its
2 reasons for finding that the application of such the
3 standards and guidelines is unjust to the child or a party
4 or is inappropriate in that particular case.

5 (c) If the court does not order a parent owing a duty
6 of support to a child to pay any amount for the child's
7 support, the court shall state its reasons for not ordering
8 child support.

9 (7) The judgment or order concerning child support and
10 each modification of a judgment or order for child support
11 must include a provision addressing health insurance
12 coverage in the following cases:

13 (a) If either party has available through an employer
14 or other organization health insurance coverage for the
15 child or children for which the premium is partially or
16 entirely paid by the employer or organization, the judgment
17 or order may contain a provision requiring that coverage for
18 the child or children be continued or obtained.

19 (b) In the event that health insurance required in a
20 child support judgment or order becomes unavailable to the
21 party who is to provide it, through loss or change of
22 employment or otherwise, that party shall, in the absence of
23 an agreement to the contrary, obtain comparable insurance or
24 request that the court modify the requirement.

25 (c) The parties may by written agreement provide for

1 the health care coverage required by this section, subject
2 to the approval of the court.

3 (d) Unless otherwise provided in the decree, the health
4 care coverage required by this section is in addition to and
5 not in substitution, in whole or in part, for the child
6 support obligation.

7 (8) (a) Unless an exception is found under 40-5-315 or
8 40-5-411 and the exception is included in the support order,
9 a support obligation established by judgment, decree, or
10 order under this section, whether temporary or final, and
11 each modification of an existing support obligation made
12 under 40-6-118 must be enforced by immediate or delinquency
13 income withholding, or both, under Title 40, chapter 5, part
14 3 or 4. A support order that omits the exception or that
15 provides for a payment arrangement inconsistent with this
16 section is nevertheless subject to withholding for the
17 payment of support without need for an amendment to the
18 support order or for any further action by the court.

19 (b) After October 1, 1993, if a support order subject
20 to income withholding is expressed in terms of a monthly
21 obligation, the order may be annualized and withheld on a
22 weekly or biweekly basis, corresponding to the obligor's
23 regular pay period.

24 (9) For the purposes of income withholding as provided
25 in subsection (8), whenever the district court establishes

1 or modifies a child support obligation, the judgment,
 2 decree, or order must include a provision requiring the
 3 parent obligated to pay support to inform the court and, if
 4 the department of social and rehabilitation services is
 5 providing services under Title IV-D of the Social Security
 6 Act for the enforcement of the judgment, decree, or order,
 7 the department, of the following:

8 (a) the name and address of the parent's current
 9 employer;

10 (b) whether the parent has access to health insurance
 11 through an employer or other group; and

12 (c) if insurance coverage is available, the health
 13 insurance policy information.

14 (10) If the department of social and rehabilitation
 15 services is providing or later provides support enforcement
 16 services under Title IV-D of the Social Security Act, each
 17 district court order or modification of an order must
 18 contain a statement providing that the noncustodial parent,
 19 without further order of the court, is required to obtain
 20 and maintain health insurance coverage as provided in
 21 40-5-208. Failure to include a warning statement in the
 22 judgment or order does not preclude the imposition of
 23 sanctions under 40-5-208.

24 (11) Each district court judgment, decree, or order
 25 establishing a final child support obligation under this

1 part and each modification of a final order for child
 2 support must contain a statement that the order is subject
 3 to review and modification by the department of social and
 4 rehabilitation services upon the request of the department
 5 or a party under 40-5-271 through 40-5-273 when the
 6 department is providing services under Title IV-D of the
 7 Social Security Act for the enforcement of the order."

8 **Section 24.** Section 40-6-117, MCA, is amended to read:

9 **"40-6-117. Enforcement of judgment or order.** (1) If
 10 existence of the father and child relationship is declared
 11 or paternity or a duty of support has been acknowledged or
 12 adjudicated under this part or under prior law, the court
 13 may order support payments to be made to the mother, the
 14 clerk of the court, or a person, corporation, or agency
 15 designated to administer them for the benefit of the child
 16 under the supervision of the court.

17 (2) Willful failure to obey the judgment or order of
 18 the court is a civil contempt of the court. All remedies for
 19 the enforcement of judgments apply.

20 (3) Child support ordered on behalf of a minor child
 21 must be paid to:

22 (a) the legal custodian of the minor child;

23 (b) (i) any other person, organization, or agency
 24 having legal physical custody of the minor child or
 25 collecting child support on behalf of the minor child under

1 a legal assignment of rights; or

2 (ii) the court for the benefit of the minor child;

3 (c) any other person or agency designated as caretaker
4 of the minor child by agreement of the legal custodian; or

5 (d) any assignee or other person, organization, or
6 agency authorized to receive or collect child support."

7 **Section 25.** Section 53-2-613, MCA, is amended to read:

8 "53-2-613. Application for assistance -- assignment of
9 support rights. (1) Applications for public assistance,
10 including but not limited to aid to families with dependent
11 children and medical assistance, must be made to the county
12 department of public welfare in the county in which the
13 person is residing. The application ~~shall~~ must be submitted,
14 in the manner and form prescribed by the department of
15 social and rehabilitation services, and ~~shall~~ must contain
16 information required by the department of social and
17 rehabilitation services.

18 (2) A person by signing an application for public
19 assistance assigns to the state, the department of social
20 and rehabilitation services, and to the county welfare
21 department all rights the applicant may have to support and
22 medical payments from any other person in his the
23 applicant's own behalf or in behalf of any other family
24 member for whom application is made.

25 (3) The assignment:

1 (a) is effective for both current and accrued support
2 and medical obligations;

3 (b) takes effect upon a determination that the
4 applicant is eligible for public assistance;

5 (c) remains in effect with respect to the amount of any
6 unpaid support and medical obligation accrued under the
7 assignment that was owed prior to the termination of public
8 assistance to a recipient.

9 (4) Whenever a support obligation is assigned to the
10 department of social and rehabilitation services pursuant to
11 this section, the following provisions apply:

12 (a) If ~~such the~~ support obligation is based upon a
13 judgment or decree or an order of a court of competent
14 jurisdiction, the department may retain assigned support
15 amounts in an amount sufficient to reimburse public
16 assistance money expended.

17 (b) ~~No A~~ recipient or former recipient of public
18 assistance may not commence or maintain an action to recover
19 a delinquent support obligation without notifying the
20 department department's child support enforcement division.
21 The department may then release or relinquish its assigned
22 interest or enter the proceeding. This subsection (4)(b)
23 does not limit the right of any person to recover money not
24 assigned.

25 (c) If a notice of assigned interest is filed with the

district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department department's child support enforcement division is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department of ~~social-and-rehabilitation-services~~, and the county welfare department."

NEW SECTION. Section 26. Child support payments to follow the child. Child support ordered on behalf of a minor child must be paid to:

(1) the legal custodian of the minor child;

(2) (a) any other person, organization, or agency

having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(b) the court for the benefit of the minor child;

(3) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(4) any assignee or other person, organization, or agency authorized to receive or collect child support.

NEW SECTION. Section 27. Lien against real and personal property -- effect of lien -- interest -- warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(a) Except as provided by subsection (7) for motor vehicle liens, a support lien is perfected upon filing the lien with the department's registry.

(b) The department shall make information about a

support lien available to any interested person or entity.

(c) A support lien filed with the department's registry constitutes constructive notice to a purchaser of real property from an obligor.

(d) Except as provided by subsection (7), a lien against an obligor's personal property is not effective against any person, firm, corporation, association, political subdivision, or agency of the state in possession of the obligor's personal property until the department serves a notice of the lien to the person or entity.

(7) A support lien may be asserted against any motor vehicle, as defined in 61-1-102, as follows:

(a) When an obligor is the owner of a motor vehicle, the department may give notice of the support lien to the department of justice as provided in 61-3-103(6). A notice of support lien filed with the department of justice constitutes constructive notice of the lien to subsequent purchasers or encumbrancers of a motor vehicle from the obligor, commencing from the date the notice is delivered to the department of justice.

(b) (i) To assert a support lien on motor vehicles of which an obligor may later acquire ownership, the department may, each month, prepare and submit to the department of justice a list of obligors against whom there is a support lien. The list must identify each obligor by name,

last-known address, amount of lien, social security number, if known, and any other identifying information needed by the department of justice to identify the obligor.

(ii) The department of justice shall, before issuing a certificate of ownership for any motor vehicle, determine whether the name of the person applying for the certificate is on the most recent monthly support lien list. If the person's name is on the list, the department of justice shall enter a lien on the certificate of ownership under the name of the department as lienholder.

(c) The department shall reimburse the department of justice for reasonable costs incurred by the department of justice in implementing this subsection (7).

(8) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (8) is in addition

to and not in substitution for any other interest accrued or accruing under any other provision of law.

(9) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(10) A support lien under this section is in addition to any other lien created by law.

(11) A support lien under this section may not be discharged in bankruptcy.

(12) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

NEW SECTION. Section 28. Payment of debts to department. If money is due and owing the department, a payment due under Title 40, chapter 5, parts 2 or 4, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment, notwithstanding the

1 department's acceptance of the payment, unless there is
2 additional written agreement, signed by the department, that
3 the payment is payment in full.

4 NEW SECTION. **Section 29.** Repealer. Sections 40-5-241,
5 40-5-245, and 40-5-246, MCA, are repealed.

6 NEW SECTION. **Section 30.** Codification instruction. (1)
7 [Sections 26 and 27] are intended to be codified as an
8 integral part of Title 40, chapter 5, part 2, and the
9 provisions of Title 40, chapter 5, part 2, apply to
10 [sections 26 and 27].

11 (2) [Section 28] is intended to be codified as an
12 integral part of Title 53, chapter 2, part 1, and the
13 provisions of Title 53, chapter 2, part 1, apply to [section
14 28].

15 NEW SECTION. **Section 31.** Severability. If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

-End-

COMMITTEE--HOUSE JUDICIARY

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0323	MCCARTHY, BEA		INJUNCTION AGAINST ONE CONVICTED OF CRUELTY TO ANIMALS					
	1/23	2/02		DO PASS	2/3	VOTE: 18-0		2/05
HB0335	TOOLE, HOWARD		GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS					
	1/23	2/12		PASS AS AMENDED	2/16	VOTE: 18-0		2/18
HB0340	BROWN, DAVE		INCLUDE PURCHASE OR ATTEMPT TO PURCHASE ALCOHOL UNDER POSSESSION STATUTE					
	1/25	2/02		PASS AS AMENDED	2/4	VOTE: 16-2		2/08
HB0346	BENEDICT, STEVE		MEDICAL MALPRACTICE TORT REFORM					
	1/25	2/09		PASS AS AMENDED	2/19	VOTE: 10-8		2/20
HB0357	FAGG, RUSSELL		EXPAND CATEGORY OF PERSONS PROTECTED BY AIRCRAFT LIEN					
	1/26	2/09		PASS AS AMENDED	2/9	VOTE: 18-0		2/11
HB0370	MOLNAR, BRAD		ESTABLISHING INCENTIVES TO ATTRACT DOCTORS TO MEDICAL SHORTAGE AREAS					
	1/27	2/10		TABLED ON	02/13	VOTE: 15-2	APPROPRIATIONS	
HB0396	WHALEN, TIM		REFUSAL OF DRIVER TO TAKE ALCOHOL TEST CAN'T AFFECT INSURANCE					
	1/30	2/04		PASS AS AMENDED	2/4	VOTE: 16-2		2/09
HB0405	FISHER, MARJORIE		CREATE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR					
	1/30	2/05		PASS AS AMENDED	2/9	VOTE: 17-1		2/11
HB0409	PAVLOVICH, BOB		SET REQUIREMENTS NECESSARY TO WAIVE INDIGENTS' FILING FEES IN COURT ACTIONS					
	1/30	2/05		DO PASS	2/5	VOTE: 18-0		2/08
HB0411	JOHNSON, ROYAL		DEPT. OF JUSTICE SUBSTANTIVE CHANGES TO GAMBLING LAWS					
	1/30	2/05		PASS AS AMENDED	2/12	VOTE: 18-0		2/17
HB0416	STRIZICH, BILL		REQUIRE REPORTING OF HATE CRIMES					
	2/01	2/10		PASS AS AMENDED	2/17	VOTE: 11-7		2/18
HB0429	STRIZICH, BILL		MAKE MANUFACTURE OF DANGEROUS DRUGS A SEPARATE OFFENSE; RAISE PENALTY					
	2/02	2/11		DO PASS	2/11	VOTE: 15-2		2/15

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 12, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Angela Russell

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB's: 482, 335, 228, 496, 499
Executive Action: HB's: 411, 499, 496, 346, 157

HEARING ON HB 482

Opening Statement by Sponsor:

REP. JOHN C. BOHLINGER, House District 94, Billings, introduced
this bill to provide for civil contempt for failure to pay child
support and presented testimony describing child support problems

who are owed child support. EXHIBIT 6

HEARING ON HB 335

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, presented written testimony. EXHIBIT 7

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Services, SRS, presented written testimony. EXHIBITS 8, 9, 10 and 11.

Peter S. Blouke, Ph.D., Director, SRS, presented written testimony. EXHIBIT 12

George Bennett, Montana Bankers Association, presented written testimony. EXHIBIT 13

Roger Tippy, Montana Independent Bankers, presented written testimony. EXHIBIT 14

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. WINSLOW asked REP. TOOLE if this bill was the result of a study carried out by Child Support Enforcement Services (CSES). REP. TOOLE said the bulk of his bill is the result of an ongoing administrative review of procedures. REP. TOOLE offered amendments to address the privacy question.

REP. WINSLOW asked Ms. Wellbank if the CSES has done a study to explain the overall impact. Ms. Wellbank said that a nationwide study of 38,000 child support cases identified key problems.

REP. DUANE GRIMES referred to amendment number 2 of Mr. Tippy's amendments; he was concerned about the order for subpoena, as a subpoena comes out of the court. REP. TOOLE intends that these amendments implement a change to an order rather than a request. Parents will not be subpoenaed; they will be served by mail.

REP. VIVIAN BROOKE asked REP. TOOLE whether continuing to protect financial institutions will eliminate the protection of children. REP. TOOLE replied that, while the right to privacy is a strong right, the right to support for the benefit of children is also very strong. The intention of this bill is to implement the policy that the person who hides his assets will be obligated to

pay support.

REP. DIANA WYATT asked Mr. McCray, Staff Attorney, Child Support Enforcement Services, to discuss the study of lien effects with the committee. Mr. McCray said there has been a considerable number of studies in other states having to do with liens as a tool. The lien process in Montana has not been very effective. Federal programs require states to have liens upon personal property. Montana presently already has that in the system but is trying to borrow ideas from other states to make that use easier to apply.

REP. LIZ SMITH said the lien law is already in existence, and this bill simply enhances that opportunity. She asked Mr. McCray specifically what the intention of this bill is. Mr. McCray said there are many different opportunities for hearings, and CSES is making the lien available anytime they reduce the child support obligation to some certain amount. That's the primary emphasis. Right now, in order to get the lien, CSES must duplicate the same hearing process.

Regarding banking institutions, the right to privacy is held in very high regard, especially in law enforcement circles.

Closing by Sponsor: None.

HEARING ON HB 228

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said this bill will improve the law on reciprocal enforcement of support to be broader and closer in line with the national trend for collection of child support. REP. TOOLE presented amendments. EXHIBIT 15

Proponents' Testimony:

John McCray, Staff Attorney, Child Support Enforcement Services, said there were weaknesses in the original bill. One of those problems is that when a person moves to another state, the state is not bound by the original support order. When an individual runs from state to state, it is possible to have from 6 to 12 conflicting orders. Jurisdictional conflicts cause a tremendous amount of litigation. The Interstate Commission visited various states and state health public hearings on how to handle this problem, and this bill is the resolution. When the bill was originally drafted, it was generic in its terms, and it didn't allow for states like Montana with a dual enforcement system, a court-based enforcement system, and an administrative-based enforcement system. Several revisions and amendments have been made to the original commission rights to incorporate the

House Bill 335

CHILD SUPPORT ENFORCEMENT DIVISION
SOCIAL AND REHABILITATION SERVICES

Sponsor: Representative Howard Toole

The Child Support Enforcement Division (CSED) submits this composite bill as part of an overall plan to improve or enhance services offered to the children of Montana. The individual components of the proposal bill are as follows:

1. PROVIDING FOR ADDITIONAL FEES

Section 14 proposes to amend MCA Section 40-5-210 to broaden existing provisions for when and under what circumstances the CSED may collect a fee for services rendered. That is to say, under existing law a fee may only be charged to an obligor when the obligor's fault caused the CSED action. However, the CSED provides numerous services where the obligor's fault is not an issue. An example would be when a parent, either obligor or obligee, wants to modify a support order. Because there is no fault, the CSED is unable to charge a fee. A second example occurs when either an obligor or obligee requests CSED services such as immediate income withholding. In immediate income withholding cases, there is no delinquency. Therefore there is no fault, and consequently no chargeable fees. In short, with the rising costs of state provided services, it is not unreasonable to expect the person wanting a specialized service such as the CSED provides to pay, at least in part, for the costs of that service. Therefore, Section 14 provides for allocation of fees between obligor and obligee based either on fault or a request for services where no fault is an issue. For similar reason, Section 14 also provides for application fees, handling fees and late payment fees.

2. REQUIRING NOTICE TO CSED WHEN NOTICE REQUIRED TO DEPARTMENT. Section 11 and Section 25 respectively amend MCA Sections 40-5-202 and 53-2-613 to clarify where a person is required to give notice. Under existing law, those statutes require parents under some circumstances to give notice to the Department. The problem is that notice to the department is too general. Notice is often given to other divisions within the department but not specifically to the CSED. By giving such notice the parent is technically correct, however, the CSED is unaware of the notice and is unable to take timely action based on the notice. This problem is corrected by providing that the notice to the department is accomplished by giving notice to the CSED.

3. DEFINING SUPPORT ORDER TO INCLUDE TRIBAL COURTS. Section 10 amends MCA Section 40-5-201 to redefine "support order" to include orders issued by tribal courts. At present there is some ambiguity as to whether the CSED can enforce a tribal court order. Should

the courts decide this ambiguity against the CSED, children with orders entered by a tribal court could not receive CSED services.

4. EXTENDING SERVICES TO CHILDREN OVER AGE 18. Section 10 amends MCA Section 40-5-201 to redefine "child" to include 19 year old children plus any other child, regardless of age, if the child is mentally or physically handicapped and such incapacity began prior to the child reaching the age of 18 years. The intent of the amendment is to conform the definition of "child" to the powers of the District Court under MCA Section 40-4-208(5) to order support for children over age 18 years. Without the amendment, the CSED continues to be unable to enforce orders for support after the child attains age 18 even though the court order continues past that age.

5. REQUIRING PRIVATE BUSINESS TO SHARE INFORMATION. Section 12 amends MCA Section 40-5-206 to require all persons, businesses, unions and other private entities to cooperate with the CSED in locating absent parents and the absent parent's assets and income. Under present law, only governmental units are required to provide such cooperation. Without this amendment, the CSED, in many cases, will be unable to locate the absent parent or his or her assets. The information is there but the CSED has no way to compel it. Therefore, many children go without support because the CSED is limited in it's ability to obtain information that is readily available.

This proposed amendment also requires the CSED to maintain confidentiality of the information received.

6. ALLOWING CHILD SUPPORT TO FOLLOW CHILD. Sections 8 and 24 respectively amend MCA Section 40-6-117 and 40-4-204. The purpose of these changes is to clarify the law that child support payments are to follow the child. To explain, at present most support orders require child support to be paid to a specifically named person. If the child later goes to live with a third party, for example, a grandparent or aunt, or goes into foster care, many courts have held that support does automatically go to the third party. A modification or new support order is necessary. This is a time consuming and labor intensive procedure which can be made unnecessary by the proposed amendments and new statute.

7. ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY. Section 27 creates a new law. Sections 19 and 20 amend MCA Section 40-5-242 and 40-5-247 respectively. Section 28 repeals MCA sections 40-5-241, 40-5-245 and 40-5-246. The purposes of these changes are to enhance existing procedures for imposing child support liens on an obligor's real and personal property. Such liens are required by federal regulations and the existing procedures do comply. However, existing procedures are limited to use of a process that is redundant to other remedies available to the CSED. By contrast, the proposed amendments create the lien whenever the CSED reduces a support order to a sum certain judgment. Unlike existing procedures, the lien would also apply,

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without further processing, to sum certain child support judgment entered by a District Court.

Under existing procedures there is a general judgment lien created by the support order. The lien applies to any real property owned by the obligor in the county in which the judgment is filed. If there is real property in another county, the CSED can file a transcript of the judgment from the original county to the other county where the property is located. This transcript creates the lien on the real property in the new county. The problem with this process is the CSED either has to know where real property exists and file the transcripts accordingly, or file a transcript in all 56 counties to get a blanket lien on any possible real property.

In contrast to this system, the proposed child support liens create a blanket lien against all real property wherever it lies in this state. To enable title researchers and other interested parties in discovering the existence of any liens, the bill also creates a central lien registry with the CSED.

In many cases, the easy imposition of liens will motivate a parent to keep a support obligation current. In other instances where there is a delinquency, the routine imposition of liens will result in eventual payment of support when the obligor attempts to sell or transfer the encumbered real or personal property.

The proposed amendments also provide for streamlining the "warrant for distraint" process which permits the CSED to more effectively enforce the support liens.

Additionally, for bankruptcy purposes, the lien has the priority of a "secured creditor" from the date the lien is perfected. The lien, however, is subordinate to any previously perfected lien, mortgage or later purchase money mortgage.

8. PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY. Section 16 amends MCA Section 40-5-226 to give the CSED the authority to enforce its own orders. Currently, the only remedy for enforcement of administrative orders is to take the matter to District Court. With only five attorneys available state wide, with 56 possible District Courts, and with the overall extent of the problem, the CSED does not have the resources to enforce its own orders. As a result, many obligors have ignored the administrative process to the detriment of children.

This amendment corrects the problem by giving the CSED the ability to enforce its orders through contempt powers. That is, if a person fails to obey an administrative order that person may be fined in an amount of up to \$500 until he or she obeys. Although this procedure is denominated as "contempt", it is not the same as judicial contempt. Rather, the procedure comes under the administrative remedy known as "civil monetary penalty or (CMP)". This is not unprecedented in Montana. For example, the Board of Oil and Gas Conservation may levy a CMP from \$5,000.00 per day up to \$125,000.00 to enforce its orders. The Department of Justice

may enforce its gambling control orders by levying a CMP up to \$10,000.00 for each violation.

9. CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT. Section 2 through 7 and section 21 respectively amend MCA Sections 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211 and 40-5-255. The purposes of the amendments are to consolidate and standardize all the various limitations which apply to child support into one uniform period. At present, limitation periods are different for each aspect of child support. For example, each installment of child support is an individual judgement upon which there is a statute of limitation of 10 years. Thus, when a child is 11 years old, the first year of unpaid support is lost due to the limitation period. There is a six year limitation on writs of execution to collect support except when there is a special permission of the Court. This is inconsistent with the foregoing 10 year limitation period. In short, the various limitation periods encourage obligors to avoid paying support. The longer they hold out, the more they benefit. Meanwhile the child goes without support he or she is entitled to receive. Under the proposed amendment, the uniform limitation period on child support actions would be 10 years from termination of the support order.

10. ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME WITHHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGEEES OF THE SAME OBLIGOR. Section 22 amends MCA Section 40-5-415 to give the CSED authority to distribute income withholding funds between obligees of the same obligor. Under present law, in multiple family cases, distribution of proceeds from income withholding is distributed to the first income withholding case. If the obligor has sufficient income, distribution goes to the second case, and so forth. The problem is that many obligors do not have sufficient income to provide for all former families. Consequently, only one family will receive support to the detriment of others. The amendment permits the CSED to develop rules which will permit distribution between all of the cases so that each obligee may receive some support.

11. ELIMINATING OBSOLETE PROVISION OF LAW. Section 9 amends MCA Section 40-5-118 to eliminate obsolete provisions of law. These provisions were supplanted by other law requiring the CSED to set up a central clearinghouse for all Title IV-D cases. This amendment was recommended by the Legislative Auditors office.

12. CORRECTING INCONSISTENT PROVISIONS.

A. Section 18 amends MCA Section 40-5-232 to conform to MCA Section 40-5-236. The latter statute provides that a blood test result fails to exclude an alleged father, if he continues to deny paternity the matter is referred to the District Court for ultimate trial. However, the wording of subsection (5)(F)(iii) of 40-5-232 makes it appear that referral for trial can occur before blood tests are taken. The proposed amendment conforms this statute with the obvious intent of the process, that is, to give the CSED an

administrative method of ordering blood tests.

B. Section 11 amends MCA Section 40-5-202 to conform with MCA Section 40-5-203. The latter statute provides that the CSED will offer services to any person who applies for such services. "Any person" includes obligors as well as obligees.

The ability to provide services to both obligors and obligees is required by federal regulations. The problem is that the powers and duties enumerated in 40-5-203 are worded as if services are only provided to obligees. The proposed amendment clarifies those powers to include cases in which the obligor has applied for services.

13. CONFORMING INCOME WITHHOLDING TO OBLIGOR PAY PERIODS

Sections 8 and 23 amend MCA Section 40-4-204 and 40-6-117 by permitting the support obligation to be annualized and withheld on a weekly or bi-weekly basis to conform to the employer's payroll system. Without this change, employers will continue to have difficulty complying with income withholding orders.

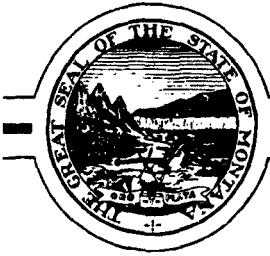
14. PAYMENT OF DEBTS DUE THE DEPARTMENT

Section 28 creates a new statute to correct a problem experienced by the division. When submitting a check for child support payments to the division, some obligors write "paid in full" on the back. This is an attempt to compromise a larger arrearage. Since the division processes a large number of checks, the language on the back of the check is often missed and the division endorses the check. The endorsement can be interpreted to mean that the division has accepted the terms imposed by the obligor, and that the division agrees that the debt has been paid in full.

This statute provides that the division must enter into a separate legal agreement with the obligor to compromise any debt.

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT # 8
DATE 2-12-93
335



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House Bill 335
An Act to Improve the Effectiveness and Efficiency
of Child Support Enforcement Services
(CSED Omnibus Bill)

Testimony
Submitted by Mary Ann Wellbank, Administrator
Child Support Enforcement Services
Department of Social and Rehabilitation Services

A handwritten signature in black ink, likely of the Administrator Mary Ann Wellbank, written over the typed name.

House Bill 335 is the Child Support Enforcement Division's omnibus bill. The purpose of this bill is to make child support enforcement in Montana more effective, and to enable more children to obtain the financial support of both parents. Enactment of this legislation will provide more effective resources to help locate absent parents or their assets and will facilitate collecting and distributing money to children.

With significant welfare cuts under consideration, increasing burdens on Montana taxpayers and the limited resources available to this state, the need for a strong child support enforcement program has never been greater. Nor has the demand for services ever been higher. The division caseload is skyrocketing at a rate of 500 new cases per month. The Child Support Enforcement Division currently handles 39,000 cases, and our caseload is expected to increase to 54,000 by the end of the 94-95 biennium. Last year, we collected \$20 million in child support. Of this, \$7.3 million was returned to the state and federal governments to help offset AFDC payments made to families, and \$12.1 million was forwarded to custodial parents who do not receive AFDC.

In addition to its collections, the CSED actually saves Montana taxpayers money. National statistics show that for every \$5.00 of child support collected for families who aren't on AFDC, \$1.00 in public welfare benefits is saved. For last year, this cost avoidance translated to a savings for Montana citizens of \$2.42 million. Additionally, the division achieved savings of \$1,000,000 in medicaid costs by identifying private insurers responsible for childrens' medical coverage. The division also collects parental contributions on behalf of the Department of Family Services for children in foster care.

A major cause of children in poverty in the United States is an absent parent who is not paying support. In Montana, over \$100 million in back support is owed. Think of what collection of

that outstanding debt would do to help our children attain a better standard of living and a brighter future.

I have prepared a hand-out to explain the major provisions of the bill and why they are needed. The first page of the hand-out is a very brief "at a glance" overview; the remaining pages describe the bill in greater detail. I would like to take a few moments of your time to explain the key provisions:

(REFER TO HAND-OUT)

Representative Toole has also submitted amendments, which are primarily to satisfy some concerns expressed by banking organizations with respect to sharing information with the CSED.]?

The 53rd Legislature has the unique opportunity to implement a major revitalization of the Montana child support enforcement system to recoup more AFDC, foster care and medicaid dollars, and to help more children obtain the support they deserve. The limited state resources and the public outcry for better, more efficient services make child support legislation necessary.

Strengthening the Montana Child Support Enforcement system will allow more families to make the transition from welfare dependency to self-sufficiency. House Bill 335 bill is crucial to that effort. Regular child support income can make the difference for many families.

Thank you for the opportunity to provide testimony on this legislation. CSED management and attorney staff members are here to answer your questions. We want you to be comfortable supporting this important legislation for Montana, and will provide any additional information you may need to make your decision.

EXHIBIT #8

DATE 2-12-93

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HB 335 "AT A GLANCE"

An Act To Improve Efficiency and Effectiveness of Child Support Enforcement

1. **Providing for Additional Fees, Statutorily Appropriating Fees & Penalties**
Section 14: Expands CSED ability to develop regulations to charge fees to both obligors, and obligees, when appropriate
2. **Requiring Notice to CSED when Notice Required to Department**
Sections 11 and 25: Requires legal notices to be served on CSED rather than Department in general
3. **Defining Support Order to Include Tribal Courts**
Section 10: Clarifies ambiguity in law to allow CSED to continue to enforce orders of tribal courts in cases where CSED has jurisdiction
4. **Extending Services to Children Over Age 18**
Section 10: Redefines child to include 19 year olds, plus mentally or physically handicapped children over 18. Many support orders go beyond the age of 18 for students or handicapped children, yet the division cannot enforce them.
5. **Requiring Private Businesses to Share Information**
Section 12: Requires businesses to provide information to assist the CSED in the location of an obligor or the obligor's assets
6. **Allowing Child Support to Follow Child**
Sections 8 & 24: Physical custody of some children frequently changes from a mother to a grandparent to an aunt. Allows support to follow child when physical custody changes without need for modification of order.
7. **Enhancing Existing Support Liens on Real and Personal Property**
Sections 19, 20 & 27: Simplifies administrative procedures, creates centralized record of liens in CSED
8. **Providing Administrative Contempt Authority**
Section 16: Gives the CSED authority to enforce its own orders by providing for fines of up to \$500 for obligors who ignore orders to pay support.
9. **Consolidating and Standardizing Statutes of Limitations**
Sections 2 - 7, & 21: Current statutes of limitations vary and provide incentive for obligor to evade payment until limitation is reached. Will standardize statutes to uniform period of 10 years after support order is terminated
10. **Distribute Income Withholding Payments between Multiple Obligees**
Section 22: Allows the division to develop rules to distribute collections from an obligor's income to all the obligor's children of multiple obligees
11. **Eliminating Obsolete Provisions**
Section 9: Housekeeping. Should have been repealed when other law was enacted.
12. **Correcting Inconsistent Provisions**
Section 18: Conforms two contradictory statutes with intent of law
13. **Conforming Income Withholding Periods to Obligor Pay Periods**
Sections 8 & 23: Makes it easier for employers to comply with withholding requirements by permitting weekly or bi-weekly withholding of monthly ordered amounts.
14. **Payment of Debts due the Department**
Section 28: Requires written agreement of the department before a debt can be considered paid in full. Protects department. Simple (accidental) endorsement on back of check won't suffice as agreement.

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DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

EXHIBIT # 10
DATE 2-12-93
HB 335



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CHILD SUPPORT ENFORCEMENT DIVISION

Mary Ann Wellbank, Administrator

OPTIONS TO STRENGTHEN CHILD SUPPORT ENFORCEMENT SERVICES
IN MONTANA

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OPTIONS TO STRENGTHEN CHILD SUPPORT ENFORCEMENT SERVICES

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Social and Rehabilitation Services
Child Support Enforcement Division

Options to Strengthen Child Support Enforcement Services

LEGISLATION

Hospital Paternity Establishment

Early paternity establishment greatly reduces, if not eliminates the costs involved with locating alleged fathers, genetic testing, and hearings costs related to paternity establishments. Additionally, if the father has medical insurance through his employer, medicaid costs can be reduced. And the earlier paternity is established, the earlier a child support obligation can be established to help keep children off welfare. Additionally, paternity establishment has benefits to the child, including genetic history, and eligibility for medical insurance, eligibility for inheritances, veterans' benefits, social security and medical benefits.

Some states, including West Virginia and Washington require by law that hospitals have a program to establish paternity at the time of birth. Hospital staff meets with the parents, explains the rights and responsibilities of both parents, and asks the father to sign a voluntary acknowledgement of paternity. The hospital staff explains that the voluntary acknowledgement is sufficient documentation to begin child support order proceedings should the need arise. The Child Support office, and the Vital Statistics Bureau at the Department of Health work with the hospitals to train hospital staff, answer questions and develop appropriate forms and procedures. Both parents have been receptive to the process, and it seems to develop a bond between the father and child.

In some states hospitals receive a fee for each paternity established, in others they don't. Federal regulations permit a maximum reimbursement to hospitals of \$20.00 per paternity established.

It is our understanding that Representative Bohlinger, is developing legislation which will include paternity establishment.

Employer Reporting

Often parents who successfully elude paying their child support change jobs frequently, work intermittently or work in seasonal or cyclical employment. Clearly, using wage withholding and other enforcement methods with this group is, at best, difficult. The parent's employment often terminates before the order to withhold income reaches the employer. Information obtained from quarterly reports to the state's employment security division is

frequently outdated.

The states of Washington and Alaska have each designed, and are currently testing, employer reporting programs to address this problem. Minnesota has been operating an employer disclosure program since 1987.

The Washington program, which began in July 1990, requires targeted industries to report all new hires and rehires to the state child support agency within 30 days of hiring. Washington considers its program to be cost effective, since for every dollar spent on it, \$22 were collected.

The targeted industries are those which typically employ individuals on a seasonal or cyclical basis, hire and lay off as needed for projects, or have rapid turnover. They are: building construction, and other construction trades (highways, bridges, tunnels, sewers and power lines), manufacturing of transportation equipment, business services and health services. Several methods of reporting are available to those industries including: W-4 forms, employer designed forms, or using a toll-free telephone number.

After 18 months of operation, over 12,000 employers submitted over 216,000 reports of new hires and rehires. Eight percent of these matched with open cases of parents obligated to pay support, and of these, 87% had made no support payments during the previous year. Collections were successful among 43% of those who were non-payers the previous year, averaging \$1,200 per parent over an eighteen month period.

It is our understanding that employer reporting is being included in Representative Bohlinger's legislation.

Restrictions or Suspensions of State Issued Licenses.

The state grants many types of licenses, including drivers licenses, professional and occupational licenses, hunting and fishing licenses, general business licenses, liquor licenses, etc. Restriction or suspension of these licenses would be an effective tool for states to use in enforcement. The concept is that one arm of the state should not grant privileges to an obligor if he or she has violated state laws or orders of another arm of the government.

Several states, including California, Arizona and Vermont, tie the issuance or renewal of an occupational license to a positive child support payment history. The U.S. Commission on Interstate Child Support Laws recommends all states adopt such laws.

The Commission recommends that the licensing agency not issue a license to anyone who is wanted for failing to appear in a child support or parentage case as a result of indifference to a court

order or summons. Additionally, an obligor who is delinquent in his or her support duty should be required to work out a payment plan approved by a court or hearings office before a license is renewed or approved.

The CSED is proposing legislation, LC495, which would restrict occupational licensing. The proposal is designed to compel those license holders to meet their legal obligations to pay state ordered child support. The bill allows the CSED, after the licensee has opportunity for an administrative hearing, to issue non-disciplinary suspensions of professional and occupational licenses for failure to pay support owed if the license holder does not enter into, or fails to honor, a payment agreement. The legislation allows for consideration of financial hardship in determining whether or not to suspend a license. The legislation would not interfere with a board's authority to issue disciplinary suspensions, nor would the board be party to the hearing or required to defend either the license holder or CSED actions.

Our intent is to make it clear that it is the public policy of the State of Montana that the support of children is of the highest priority in the allocation of a responsible parent's income, and that licensees who fail to support their children should not enjoy the privileges and benefits granted by this state. Our goal is not for parents to lose income through license denial, but to make financially responsible parents aware of the risk of losing their chosen livelihood if they do not make a good faith effort to pay child support. Presumably, once they are aware of this risk, financially responsible parents will begin complying with support orders.

Other states have laws that mandate that motor vehicle departments may not issue or renew driver's licenses or vehicle registrations of non-custodial parents who have not paid child support or who fail to appear at proceedings involving child support issues. Additionally, some states have laws which require the licensing division to place liens against vehicles whose owners fail to pay child support.

The concept is that most people in the U.S. own one or more vehicles, which frequently represents the highest value asset a person owns. Vehicles provide necessary transportation for job hunting and chore-running. Sometimes the owner is extremely attached to the vehicle. With vehicles playing such an important role in the lives of Americans, controlling their use through licensing power gives the state a potent tool for child support enforcement. The U. S. Commission on Interstate Child Support recommends that drivers' licenses be suspended or not renewed if a parent has been found to be delinquent in paying support, or if he or she has failed to appear at a proceeding involving child support issues.

In Montana, an effective enforcement tool could extend to restriction of hunting and fishing licenses for failure to pay support.

It is our understanding that Representative Bohlinger, Billings, is including drivers' license and other licensing restriction legislation in his bill.

Estate Liability

The U.S. Commission on Interstate Child Support has recommended that states have laws providing that the estate of a deceased obligor will be liable for all child support past due and for all support due in the future with an appropriate discount for present value.

Lottery Winnings, Lawsuits and Other Lump Sum Payments

In Montana, the Montana Lottery is not required to report winnings to the CSED. Sometimes, the Montana CSED becomes aware of lump sum awards, and is able to issue a writ of execution for past due support owed. Insurance companies are not required to report settlements or policy payouts to the CSED, nor are settlements from lawsuits required to be reported. Oftentimes, settlements are made to parents who owe back support.

The U.S. Commission on Interstate Support recommends that payers of these types of lump sums be required to report winnings or settlements to the CSED and hold them until the CSED allows release. In cases where past due support is owed, the payor would be required to turn that amount over to the child support agency for repayment of past due support.

Attachment of Retirement Funds

Many parents have substantial savings intended for retirement. However, current needs of the child should supersede needs of the future. Parents should not be able to fund their future at the current expense of their children. Pensions and other retirement funds should be accessible to satisfy child support duties. Federal and state law should make it simple to garnish these funds.

In Montana, although the CSED can garnish wages, unemployment benefits and workers' compensation benefits, state law does not allow it to garnish Public Employee Retirement or disability benefits or Teacher's Retirement or disability benefits, even as they're being paid to the obligor.

Grandparent Responsibility for Minor Children who are Parents

In many cases, minor children have children. Some states have laws requiring the grandparents to support their grandchildren, if the

parents are minors and do not have adequate means of supporting their children. The grandparents' obligation to do so would terminate at the time the parents attain the age of majority.

Seek Work Requirements

Some parents do not pay child support because they are either unemployed or underemployed. Parents who in good faith have failed to find employment may need help from the government in locating a job. This would benefit unemployed parents, the parent's child and the taxpayer. Any legislation on this issue would need to be developed carefully, and coordinated with other SRS divisions and departments. Under the present CSED funding structure, the CSED could not administer this type of program.

Many courts use a work-release program for parents who are found in contempt. The contemnor must stay in jail or under "house arrest" during the time he or she is not working, but is allowed to work at a job during the day. This allows the contemnor to keep his job and continue to pay support.

Collections/Withholding from Arrears

Sometimes in the course of regular business, a custodial parent who is not on AFDC receives too much money. The CSED currently have no effective means of recovery. Examples are as follows:

When a Voluntary Payment Agreement is signed by an AFDC recipient who later stops receiving aid, the CSED can utilize only the Bad Debts offset process to recover as long as the individual receives no public assistance.

After a federal or state income tax refund has been held for 6 months the CSED is required by law to release it to the NAFDC Custodial Parent. In the case of federal refunds, the payor has 3 years to file an "injured spouse" claim and receive an adjustment, which is automatically withheld from funds being sent to the state for later offsets. The CSED is out the money and has to try and recover it from the custodial parent.

When the CSED has issued money to a N-AFDC Custodial parent from the other parent's personal check and that check is later returned for non-sufficient funds, we must try and recover the amount from the payee.

Upgrade Criminal Non-support Laws

In other states, criminal non-support laws have been upgraded to increase the penalties and to make application of the law easier for prosecutors. At the present time, Montana law is relatively ineffectual in the area of criminal non-support, and few county prosecutors will prosecute criminal non-support except in extremely

aggravated situations.

The law could be upgraded to make the crime a felony rather than a misdemeanor whenever arrearages exceed a specified amount.

Clarify Contempt of Court

Many states have specific laws governing what constitutes contempt in a child support case. Their laws hold that the mere failure to pay support as ordered is "per se" contempt. It is then up to the parent owing support to prove that he or she has not acted contemptuously. States which have this type of law have found it to be a very effective and useful remedy, particularly in cases with chronic delinquencies and for self-employed cases where there are few effective remedies.

At present, Montana law gives no statutory guidance to courts on this matter, and the burden of proof is put upon the proponent

Administrative Contempt Authority

The CSED Omnibus bill amends MCA Section 40-5-226 to give the CSED the authority to enforce its own orders. Currently, the only remedy for enforcement of administrative orders is to take the matter to District Court. With only five attorneys available state wide, with 56 possible District Courts, and with the overall extent of the problem, the CSED does not have the resources to enforce its own orders. As a result, many obligors have ignored the administrative process to the detriment of children.

This amendment corrects the problem by giving the CSED the ability to enforce its orders through contempt powers. That is, if a person fails to obey an administrative order that person may be fined until he or she obeys. Although this procedure is denominated as "contempt", it is not the same as judicial contempt. Rather, the procedure comes under the administrative remedy known as "civil monetary penalty or (CMP)". This is not unprecedented in Montana. For example, the Board of Oil and Gas Conservation may levy a CMP from \$5,000.00 per day up to \$125,000.00 to enforce its orders. The Department of Justice may enforce its gambling control orders by levying a CMP up to \$10,000.00 for each violation.

Provide for Additional Fees

The CSED Omnibus bill amends MCA Section 40-5-210 to broaden existing provisions for when and under what circumstances the CSED may collect a fee for services rendered. That is to say, under existing law a fee may only be charged to an obligor when the obligor's fault caused the CSED action. However, the CSED provides numerous services where the obligor's fault is not an issue. An example would be when a parent, either obligor or obligee, wants to modify a support order. Because there is no fault, the CSED is

unable to charge a fee. A second example occurs when either an obligor or obligee requests CSED services such as immediate income withholding. In immediate income withholding cases, there is no delinquency. Therefore there is no fault, and consequently no chargeable fees. In short, with the rising costs of state provided services, it is not unreasonable to expect the person wanting a specialized service such as the CSED provides to pay, at least in part, for the costs of that service. Therefore, Section 9 provides for allocation of fees between obligor and obligee based either on fault or a request for services where no fault is an issue. For similar reason, Section 9 also provides for application fees, handling fees and late payment fees.

Require Private Businesses to Share Information

The CSED Omnibus bill amends MCA Section 40-5-206 to require all persons, businesses, unions and other private entities to cooperate with the CSED in locating absent parents and the absent parent's assets and income. Under present law, only governmental units are required to provide such cooperation. Without this amendment, the CSED, in many cases, will be unable to locate the absent parent or his or her assets. The information is there but the CSED has no way to compel it. Therefore, many children go without support because the CSED is limited in it's ability to obtain information that is readily available.

Enhancing Existing Child Support Liens on Real and Personal Property

The CSED Omnibus Bill creates a new law, Section 11 and 12 amend MCA Section 40-5-242 and 40-5-247 respectively. Section 26 repeals MCA sections 40-5-241, 40-5-245 and 40-5-246. The purposes of these changes are to enhance existing procedures for imposing child support liens on an obligor's real and personal property. Such liens are required by federal regulations and the existing procedures do comply. However, existing procedures are limited to use of a process that is redundant to other remedies available to the CSED. By contrast, the proposed amendments create the lien whenever the CSED reduces a support order to a sum certain judgment. Unlike existing procedures, the lien would also apply, without further processing, to sum certain child support judgment entered by a District Court. In many cases, the easy imposition of liens will motivate a parent to keep a support obligation current. In other instances where there is a delinquency, the routine imposition of liens will result in eventual payment of support when the obligor attempts to sell or transfer the encumbered real or personal property.

Consolidate Statutes of Limitations for Child Support

The CS&ED Omnibus bill amends MCA Sections 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211 and 40-5-255. The purposes of the amendments are to consolidate and standardize all the various limitations which apply to child support into one uniform period. At present, limitation periods are different for each aspect of child support. For example, each installment of child support is an individual judgement upon which there is a statute of limitation of 10 years. Thus, when a child is 11 years old, the first year of unpaid support is lost due to the limitation period. There is a six year limitation on writs of execution to collect support except when there is a special permission of the Court. This is inconsistent with the foregoing 10 year limitation period. In short, the various limitation periods encourage obligors to avoid paying support. The longer they hold out, the more they benefit. Meanwhile the child goes without support he or she is entitled to receive. Under the proposed amendment, the uniform limitation period on child support actions would be 10 years from termination of the support order.

Fraudulent Conveyance

One problem in child support enforcement occurs when people owing child support transfer their assets to someone else. For example, a parent owing child support can transfer all assets to the spouse's name or to a trusted friend. It is very difficult for a parent seeking support or the child support agency to prove fraudulent transfer when it is suspected that the parent has transferred his or her assets to evade child support.

Child support collections could be improved if proving fraudulent transfer was made simpler for parents and agencies to use.

**Social and Rehabilitation Services
Child Support Enforcement Division**

Options to Strengthen Child Support Enforcement Services

BUDGET MODIFICATIONS

Request to Reinstate Targeted (5%) FTE and Position Vacant as of 12/29

The first modification of approximately \$202,000 each fiscal year relates to restoring 7.42 FTE targeted for elimination if SFY94. One of the positions is a vacancy that was advertised and accepted in good faith prior to 12/29.

The other 6.42 positions are desperately needed to handle the skyrocketing caseload. Three of the positions are regional office caseworkers, the backbone of this program. Another two positions are clerical positions which have since been reclassified to strengthen two critical areas of support: administrative hearings, and budgeting. The two remaining targeted clerical positions are important links in supporting caseworking staff: one is responsible for locating absent parents, the other is a hearing assistant. All positions but one are currently filled by experienced incumbents.

Request for Replacement 52nd Session Approved 14 Contract Staff with 14 State FTE

This modification is cost neutral and relates to moving funding (\$278,849 in SFY94 and \$279,107 in SFY95) from Contracted Services (2100) to Personal Services and replacing 14 contracted staff authorized by the 1991 Legislature with State FTE. In the 1991 session, the legislature approved additional resources by allowing the CSED to contract for additional staff with the private sector, however we have had difficulty attracting and retaining qualified contracted workers. Constant turnover and retraining wastes both money and time. This modification is entirely cost neutral. Funding is already in the current level budget. It is just a matter of replacing contracted personnel with State FTE.

Request to Fund Increased Communication Charges

This modification of 45,000 and \$49,000 respectively relate to costs necessitated by new federal regulations requiring increased communications with parents to advise them of amounts owing and amounts paid or collected, and the need to utilize a Voice response Unit for this requirement and to assist the public in timely response to routine questions.

EXHIBIT #10

DATE 2-12-93

HB-335

10

Request for Replacement of Special Session II Approved Contract Staff with State FTE (33 in FY94, 45 in FY95) - Cost Neutral

During Special Session II, the Legislature authorized \$1.2 million for contracted services in the CSED budget. This appropriation has been carried forward in the SFY94 and SFY95 current level budgets as \$1.2 million, and \$1.45 million respectively. The purpose of this appropriation was to provide additional resources to the CSED to meet its continually growing caseload and stringent federal requirements. No additional FTE were requested, nor was a request for additional FTE included in the SFY94-95 executive budget request.

With the change of administration, SRS has reevaluated its original request, and is now requesting authorization to hire 33 new FTE in SFY94, and 12 additional FTE (45 Total) in SFY95. This request is entirely cost neutral and would only involve a transfer of \$1,101,095 in SFY94 and \$1,468,680 in SFY95 from Contracted Services (2100) to Personal Services, Operating, and Equipment.

Exhibit #11
February 12, 1993
HB 335

Exhibit #11 is information provided by the Child Support Enforcement Division of the Dept. of Social and Rehabilitation Services in support of HB 335. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

EXHIBIT # 12
DATE 2-12-93
SB 335



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

HB 335

**An Act Generally Revising Child Support Laws
to Improve the Efficiency and Effectiveness of
Child Support Enforcement Services
(CSED Omnibus Bill)**

**Testimony of Peter S. Blouke, PhD.
Director, Social and Rehabilitation Services**

The purpose of HB 335 is to improve the efficiency and effectiveness of child support enforcement services in Montana. The need for this legislation has never been greater. The Child Support Enforcement Division caseload is growing at a rate of 500 new cases per month, and state resources are limited. With cuts in state welfare programs on the horizon, it is essential that we intensify our efforts to find alternatives to keep families, and children, out of poverty.

Many parents have the financial resources to support their own children, however they continue to evade their responsibilities. Tighter legislation is needed to locate these negligent parents and bring them into compliance with their legal and moral obligation to support their children. The fact is that in Montana alone, \$100 million is owed in back support. Not only do parents break the law by failing to support their children, these parents force their children onto welfare, public assistance and medicaid - all at the taxpayer's expense, and to the detriment of people who are truly destitute without any other alternatives.

HB 335 incorporates several provisions necessary to make the Montana child support enforcement system work better. I urge you to support this important legislation.


Submitted by: Peter S. Blouke, PhD., Director
Department of Social and Rehabilitation Services

EXHIBIT # 13
DATE 2-12-93
HB 335

WITNESS STATEMENT

NAME GEORGE T. BENNETT BILL NO. HB335
ADDRESS 111 N. Main, Arcade 3-I, Helena, MT 59601 DATE 2/12/93
WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION
SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: PLEASE SEE ATTACHED.

Amendments to HB 335
Proposed by Montana Independent Bankers

1. Page 23, line 16
Following: "and"
Insert: ", except as provided in (6),"
2. Page 25, line 16
Following: line 15
Insert: "(6) If a financial institution defined at 31-1-111 as a regulated lender possesses any information described in (2) (i), (j), or (k) with reference to a person who is the subject of inquiry by the department, the financial institution must respond only that it possesses such information. The department may then apply for an investigative subpoena under 46.4-301, setting forth in its prosecutor's affidavit the possible existence of assets or resources of the obligor and that the administration of justice requires the financial institution to disclose such information."
3. Page 62, line 3
Following: line 2
Insert: "and the clerk and recorder of the county in which real estate in which the obligor has an interest is located"

Explanation: Nos. 1 and 2 set up a procedure where the bank, etc. would tell a CSED investigator that it has information about the obligor's assets. CSED would then go to a court to obtain an investigative subpoena. The court would determine the existence of the compelling state interest and whether it outweighed the privacy interest of the depositor.

No. 3 would require a support lien on real estate to be filed for record with the county where the real estate is located, in order to facilitate title searches.

Roger Tippy
Feb. 15, 1993

TESTIMONY OF
MONTANA BANKERS ASSOCIATION

HOUSE BILL 335

FEBRUARY 12, 1993

The Association recognizes that child support enforcement is a significant problem and that the Department should have strong enforcement powers.

Three features of this bill are of concern to us:

(1) Sections 2 through 7 give judgments for child support, as to the lien thereof, more time for enforcement, renewal, suit on, etc, thus more preferential treatment than judgments obtained by the Department of Revenue for taxes. Is this good public policy?

(2) Section 12 would give the Department, without a subpoena, the right to "request" certain information from any person or entity doing business in Montana.

Under Section 40-5-202(10) MCA the Department has subpoena power; we suggest that this is the tool to be used to reach financial information?

What about Montana's unique "Right of Privacy" under Article II, Section 10 of the Montana Constitution? Under this provision financial records dealing with electronic funds transfers can be obtained from financial institutions only by court order; Sections 32-6-105 and 106 MCA.

The federal government protects the privacy of financial records under the "Right to Financial Privacy Act", Public Law 95-630, 12 USC 3401 et seq. ; see attached sections.

(3) Sections 19, 20 and 27 will give the Department a new and different "lien" which is created by a filing, not in a public record, such as the judgment roll of the clerk of court, or the records of

Page 2

EXHIBIT # 14
DATE 2-12-93
HB-335

the Secretary of State, but internally with the Department itself.

The Department already has, under existing law, the power to issue a "Warrant of Distrainment" and to file it with the clerk of court giving it the effect of a judgment; or if directed to the sheriff or other officer it has the effect of a writ of execution or garnishment.

The Association has always worked in the Legislature for centralized lien filing with electronic search so that all parties have easy access to lien information. Therefore we oppose allowing the Department to exercise, in addition to its "Warrant of Distrainment" a lien which it creates by a filing with itself.

§ A(7)—DISCLOSURE OF ACCOUNT
INFORMATION TO THIRD PARTIES (§ 205.4(d)(6))

EXHIBIT #14

DATE 2-12-93

HB-335

(a) *Account information disclosure*

We will disclose information to third parties about your account or the transfers you make:

(1) where it is necessary for completing transfers.

or

(2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant.

or

(3) in order to comply with government agency or court orders.

or

(4) if you give us your written permission.

[Note: The Board of Governors of the Federal Reserve System adopted 12 C.F.R. Part 205, effective March 30, 1979.]

§ 8.17 RIGHT TO FINANCIAL PRIVACY

STATUTE

By Title XI of the Act of November 10, 1978 (Public Law 95-630), Congress enacted the "Right to Financial Privacy Act" for the purpose of limiting the right of a governmental agency to obtain and of a financial institution to provide information contained in a customer's records. Pursuant to Section 2101 of Public Law 95-630, this title takes effect on the expiration of 120 days after November 10, 1978, its enactment date.

12 U.S.C. § 3401 Definitions.

For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a finan-

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 3409, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(d) All financial institutions shall promptly notify all of their customers of their rights under this title. The Board of Governors of the Federal Reserve System shall prepare a statement of customers' rights under this title. Any financial institution that provides its customers a statement of customers' rights prepared by the Board shall be deemed to be in compliance with this subsection.

[Pub.L. 95-630, Title XI, § 1104, Nov. 10, 1978, 92 Stat. 3698.]

12 U.S.C. § 3405 Administrative subpoena and summons.

A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpoena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

14
DATE 2-12-93
HB-335

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and to protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice of fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 have been complied with.

[Pub.L. 95-630, Title XI, § 1105, Nov. 10, 1978, 92 Stat. 3699.]

12 U.S.C. § 3406 Search warrants.

(a) A Government authority may obtain financial records under section 3402(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: You may have rights under the Right to Financial Privacy Act of 1978."

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

Feb 12, 93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell			✓
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary
DATE *Feb. 12, 1993* COMMITTEE *H. Toole* BILL NO. *HB 335*
SPONSOR (S)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GEORGE BENNETT	MONT. BANKERS ASS'N	<i>amend</i>	
JOHN McRAE	DEPT OF SRS / CSED		
Linus Carleton	SRS / CSED		
<i>MAW...</i>	CSED		
<i>W. H. Johnson</i>	<i>W. H. Council Med + Child Health</i>		
William F. Gowen	Montana Land Title Assn	<i>amend</i>	<i>no</i>
<i>Tate Conway</i>	ACES		
<i>Wilbur Johnson</i> BOX 617	<i>Johnson Advocacy Services</i> <i>Great Falls</i>		
LOCK ANDERSON	<i>At. League of Savings Inst's</i>	<i>Amend</i>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 16, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: Rep. Karyl Winslow (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 574, HB 525, HB 507, HB 573, HB 506,
HB 582, HB 518, HB 590
Executive Action: HB 573, HB 506, HB 525, HB 574, HB 518,
HB 555, HB 561, HB 551, HB 466, HB 228,
HB 335

people involved with drafting the bill to adapt to the uniform laws.

Motion/Vote: REP. TOOLE moved the amendments. Motion carried unanimously.

Motion/Vote: REP. TOOLE MOVED HB 228 DO PASS AS AMENDED. Motion carried 15-3 with REPS. CLARK, TASH and VOGEL voting no.

EXECUTIVE ACTION ON HB 335

Motion: REP. TOOLE MOVED HB 335 DO PASS.

Discussion:

REP. TOOLE explained that HB 335 makes a number of changes in existing child support laws that provide for a lien procedure or forfeiture of personal property; it allows for child support to be paid to the child's relative if he or she is a shared guardian and is aware of child support payments. The only opposition to this bill is based on concern about subpoenas and orders, and that was discussed in the February 12 hearing (see February 12 minutes).

REP. BIRD referred to page 23, section 12, and asked REP. TOOLE if this language will infringe upon the Privacy Act. REP. TOOLE said implications available from CSES pointed out that those privacy provisions did not impact state agencies which are allowed to see the information; if the bill passes, it will not infringe on the Privacy Act. REP. BIRD asked for Mr. MacMaster's opinion. Mr. MacMaster stated that, while that has been mentioned as a problem, he didn't know if it was or not. He has heard that the federal government forbids these financial lending institutions from giving out this information. CHAIRMAN FAGG said that the amendment by MIB addresses REP. BIRD'S concern.

Motion: REP. FAGG moved the amendment by Montana Independent Bankers.

Discussion:

REP. BROWN said he believes the language proposed by MIB is preferable than the amendments proposed by REP. TOOLE in the effort to solve the situation. Basically, the information must still be given, but it absolves that person from any liability that might accrue for divulging the information.

REP. TOOLE prefers his amendment rather than MIB's, because their amendment requires the court to get an investigative subpoena. He said he is concerned about several issues. First, the bank would have to go to court to initiate an investigation; and secondly, the court would give an order to the bank rather than a request for information. CSES agreed with the suggestion that

there needed to be a directive or order, but did not agree it should have to come from the court.

REP. GRIMES said that, given the number of child support cases the courts have to process, he is looking for a more acceptable manner than having to overburden the court systems. He proposes a third amendment on the basis of a compromise to satisfy the needs of the bankers to protect themselves. No specific amendment was offered.

Motion/Vote: CHAIRMAN FAGG moved the amendments drafted by the Montana Independent Bankers. Motion carried 11-6 with REPS. BROOKE, GRIMES, MCCULLOCH, RUSSELL, TOOLE, and WYATT voting no. REP. WINSLOW was excused from voting.

REP. BIRD asked REP. TOOLE to explain amendment 5. He said it simply protects the person who buys property from someone who owes child support, and it is the type of property that the bankers, by checking the central files, won't have to seize. If the buyers file for that property, and are not aware of the support lien, they still could buy that property through that lien.

Motion/Vote: CHAIRMAN FAGG moved amendment 5. Motion carried unanimously.

REP. BROWN asked REP. TOOLE if amendment 4 has been written for technical correction purposes, and REP. TOOLE said yes.

Motion/Vote: REP. TOOLE moved amendment 4. Motion carried unanimously.

Motion/Vote: REP. TOOLE moved an amendment to strike "may" and insert "shall" on page 62, line 14. Motion carried unanimously.

REP. BROWN said page 23, section 12 and a number of other areas in the bill seem to be redundant in the fact that similar or identical language appeared in REP. BOHLINGER'S bill. He wondered whether, since the language is similar in both bills, a coordinating instruction should be added.

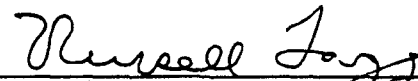
Mr. MacMaster said he wrote REP. BOHLINGER'S bill and doesn't know who wrote HB 335, but CSES asked him to include a coordinating instruction in the BOHLINGER bill saying that if that bill and HB 335 both passed, then the provisions in this bill would include suspending a person's license. This relates only to suspending the professional occupation license. REP. BOHLINGER'S license suspension would suspend all state licenses or permits.

REP. BROOKE proposed to appoint a conference committee to coordinate and amend these bills and any other bills after transmittal that have similar or identical language.

Vote: HB 335 DO PASS. Motion carried unanimously with REP.
WINSLOW excused from voting.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-16-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow			✓
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 335 NUMBER 17

MOTION: HB 335 DO Pass. Motion carried 17-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	Excused	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 335 NUMBER 17

MOTION: Banker's Assoc. Amendment carried 11-6

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	EXCUSED	
Rep. Diana Wyatt		✓
	11	6

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 335 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 23, line 16.

Following: "and"

Insert: ", except as provided in subsection (6),"

2. Page 25, line 16.

Following: line 15

Insert: "(6) If a financial institution defined in 31-1-111 as a regulated lender possesses information described in subsection (2)(i), (2)(j), or (2)(k) that relates to a person who is the subject of an inquiry by the department, the financial institution need only tell the department that it possesses information the department seeks. The department may apply for an investigative subpoena under 46-4-301, stating in the prosecutor's affidavit in support of the subpoena that assets or resources of the obligor do or may exist and that the administration of justice requires the financial institution to disclose the information."

3. Page 44, line 24.

Strike: "23"

Insert: "27"

4. Page 62, line 1.

Following: "entity"

Insert: "and to the clerk and recorder of each county in which real estate is located in which the obligor has an interest"

5. Page 62, line 11.

Following: line 10

Insert: "(e) Except as provided in subsection (7), a buyer for value of an obligor's personal property who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Committee Vote:

February 17, 1993
Page 2 of 2

6. Page 62, line 14.
Strike: "may"
Insert: "shall"

-END-

COMMITTEE--SENATE JUDICIARY

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0245	KADAS, MIKE		ESTABLISH GROUNDS FOR TERMINATION OF MOBILE HOME TENANCY		
	2/23	3/19	CONCUR AS AMENDED 3-26		3/27
HB0255	ANDERSON, SHIELL		REVISE RELEASE OR DISCHARGE OF DEFENDANT WHO PLED MENTAL DISEASE OR DEFECT		
	2/16	3/04	CONCUR AS AMENDED 3-8		3/08
HB0258	TOOLE, HOWARD		DEDUCTION FROM INTERIM EARNINGS DEDUCTION FROM WRONGFUL DISCHARGE AWARD		
	2/12	3/15	CONCUR AS AMENDED 3-17		3/18
HB0272	RICE, JIM		DEPT. BILL WITH TECHNICAL GAMBLING LAW CHANGES		
	2/12	3/17	CONCUR AS AMENDED 3-17		3/18
HB0278	BARDANOUE, FRANCIS		REVISE DISTRICT COURT CRIMINAL EXPENSE REIMBURSEMENT		
	3/10	3/22	CONCUR 3-26		3/27
HB0307	DEBRUYCKER, ROGER		ALLOW DEPT. JUSTICE TO ADOPT NEW AMUSEMENT GAMES BY RULE		
	2/12	3/17	CONCUR AS AMENDED 3-17		3/18
HB0323	MCCARTHY, BEA		INJUNCTION AGAINST ONE CONVICTED OF CRUELTY TO ANIMALS		
	2/12	3/05	3/17, 3/27 CONCUR AS AMENDED 4-13		4/13
HB0335	TOOLE, HOWARD		GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS		
	3/01	3/18	TABLED ON 03/29		
HB0340	BROWN, DAVE		INCLUDE PURCHASE OR ATTEMPT TO PURCHASE ALCOHOL UNDER POSSESSION STATUTE		
	2/16	3/03	CONCUR 3-3		3/04
HB0346	BENEDICT, STEVE		MEDICAL MALPRACTICE TORT REFORM		
	3/01	3/24	CONCUR AS AMENDED 3-26		3/30
HB0357	FAGG, RUSSELL		EXPAND CATEGORY OF PERSONS PROTECTED BY AIRCRAFT LIEN		
	2/20	3/23	CONCUR 3-23		3/27
HB0396	WHALEN, TIM		REFUSAL OF DRIVER TO TAKE ALCOHOL TEST CAN'T AFFECT INSURANCE		
	2/20	3/19	TABLED ON 03/26		

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chair Yellowtail, on March 18, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HJR 22, HB 335, HB 228, HB 638
Executive Action: HB 638

HEARING ON HJR 22

Opening Statement by Sponsor:

Rep. Brown, District 72, said he was contacted by representatives of the Paul Clark/Ronald McDonald House in Butte. The Clark House provides housing for persons having ill relatives in nearby medical institutions. The house was originally built by William Clark in memory of his son Paul. The house was built for homeless and orphan children. A trust of approximately \$350,000 was established in a New Jersey bank to fund the home after William Clark's death. After the last Clark died, the will was left to the Supreme Court to administer as was customary in the

Closing by Sponsor:

Rep. Brown said the interest from the trust should be moved from New Jersey to a Montana account. He said the interest is approximately \$26,000 each year. The annual budget of the home is in the \$60,000 range, the difference is made up by the Ronald McDonald Foundation and fund raising efforts. He asked the legislature to support the Supreme Court, so the will can be properly administered.

Rep. Brown said Sen. Lynch would carry HJR 22 in the Senate.

HEARING ON HB 335**Opening Statement by Sponsor:**

Rep. Toole, District 60, said he was carrying HB 335 for Child Support Enforcement Division (CSED). He said HB 335 accomplished many things and was important legislation. He handed out a fact sheet for HB 335 (Exhibit #1) which contained a summary on page 2. He said the most important feature of HB 335 was the establishment of a centralized lien system for child support. Liens will follow the property of the debtor regardless of the residence of the debtor. CSED will have access to all debt information in the state. He referred to sections 19, 20, and 27. He said this registry would be similar to the registry in the Secretary of State's office for other types of debt which centralizes lien information. Rep. Toole said there would be a child support lien on the property in the county where a child support order was filed but there was not a similar lien except when a warrant of distraint has been filed in a particular county for a back child support.

Rep. Toole said in section 12, page 23, there was reference to a state information system. This section requires lenders to supply information to the CSED in regards to assets that they may be holding or to give financial information about debtors as requested by CSED. He said this section had been amended in the House Judiciary Committee. The financial institution need only tell CSED they possess the information. The CSED may then obtain a subpoena which would require the lending institution to provide that information. He said the financial institutions support HB 335 with the amendment. The financial institutions are concerned with privacy for customer accounts.

Rep. Toole said HB 335 addresses statutes of limitations. Under existing law, the statute of limitations on child support expires as time passes. HB 335 allows for a 10-year statute of limitations for child support. He said the obligation will continue ten years after the original obligation expires. This is explained on page 6 line 15-18 of the bill. He said this section will be a tool for collecting outstanding child support debt.

He said HB 335 has some less significant features: 1) Annualization and conversion of child support debt to the pay period of the obligor so the exact amount can be determined from the employer; 2) An administrative contempt provision, including a \$500 fine by CSED for failing to pay child support; 3) Extension of support to 19-year olds and handicapped children over the age of 18; and 4) Provide enforcement of tribal court child support orders.

Rep. Toole concluded by saying HB 335 was an important child support bill, a flagship bill of the session.

Proponents' Testimony:

Mary Ann Wellbank, Administrator of the Child Support Enforcement Division of the Department of SRS supported HB 335. She referred to page 1 of Exhibit 1, saying that legislation concerning child support was not overlapping and that each bill served a different purpose. She said HB 335 was the "omnibus" bill by cleaning-up and making more efficient provisions of existing law.

Non-payment of child support is an increasing problem with 38,000 cases currently existing in Montana that will grow to 54,000 cases by the end of the biennium. Last year CSED collected \$20 million dollars in child support and \$25 million will be collected this year. She said more tools are needed to collect child support payments. Of the \$20 million collected last year, \$7.3 million was returned to the state and federal governments to repay AFDC and \$12.1 million was forwarded to custodial parents. In addition, its collection saved the state money by decreasing the cost of insurance, for example; a \$1 million savings on medicaid. She said, concerning families that are not on AFDC, for every \$5 collected \$1 is saved, amounting to \$2.42 million dollars in savings. She said a major cause of poverty is an absent parent who is not paying support. HB 335 would allow more families to be self sufficient by enforcing child support laws.

Rosemary Hertel supported HB 335. She said there are 40,000 child support cases in arrears that owe over \$100 million dollars mostly to the taxpayers of Montana. She said most people assume that this problem is being taken care of, and Legislation passed 10 years ago had not addressed this situation. She said people who do not pay child support, do so, not because they cannot afford it, but because they are not required to. She said a bounced check for \$76 dollars would be a felony, while the average amount owed to a family for past due child support is \$5,000. She discussed situations under which obligors do not pay their child support. She said obligors may continually try to change the amount of their child support through the court system. She said most families that receive child support are headed by women, who received less pay for the same type of work. These women cannot support a family on this income and are forced to go on welfare. She said non-custodial parents need to understand the state is serious about child support obligations. For every dollar collected enforcing child support payments the

state receives 6 1/2 cents of federal dollars, thus making the program self-funding.

Kendra Kawaguchi, Montana Land Title Association (MLTA), supported HB 335. She MLTA supported the thrust of HB 335, however, they were concerned with lien provisions under section 27 of the bill. She said the concern was that creation of the lien registry with department would not require the liens to be filed with County Clerk and Recorder where the real property exists. The effect would be to force the title industry to place a general exemption in all title policies, excepting from coverage liens which are created under section 27. This would make these loans unattractive to secondary markets.

Bill Gowen, MLTA, supported the general aspects of HB 335, but objected to the central registry. He said it would be difficult for remote counties to access the proposed registry in Helena thus making it difficult to obtain timely information. Mr. Gowen said the department has the authority to file liens in individual counties where the title companies go to receive those records. The title companies would have to receive a release from the department which may cause a delay in processing loans.

George Bennett, Montana Banker's Association, supported HB 335, but objected the central registry created by section 27. He said the department could already issue a warrant of destraint with Clerk of the Court which has the effect of a judgement. Warrants of destraint, along with writs of execution or garnishment, can be used to go after personal property. He said SRS already has that power. He said the department was asking to create a statewide lien on all property by filing a lien with themselves, with the liens dating back to the support obligation. He said this would clog the system for transferring real and personal property and for the extension of credit. He said HB 335 would not directly affect bankers, but would affect consumers, because of the necessity for a title search with the SRS with every transfer, would cause delays. He had not seen the fiscal note, but asked what would be required to set up this lien system, how many employees, and what information was available in the Secretary of State's office. He asked if SRS was really ready to respond to requests for lien information. He said he doubted SRS would be able to meet this task and suggested section 27 should be stripped out of HB 335. He said there should not be a proliferation of lien filing methods.

Bob Pyfer, Montana Credit Unions League, supported HB 335. He said HB 335 has 2 problems, the privacy aspects and the lien problem. He said the privacy issue had been dealt with in the House, but the lien issue had not been fully addressed. He said loan processes may be slowed down for everyone not just deadbeat dads. Any person filing for a nonpurchase money lien, i.e. vacations or college loans, would also be affected. He discussed the difficulties of setting up a centralized lien system and said SRS probably "doesn't want to find that out either". He said

even if the system was set up correctly and efficiently there would be a cost to it and would require a fiscal note. He said the only way this system would work was if the lien was filed with every reporting officer in the state, including the motor vehicle division for vehicles, the Secretary of State for property, and with the Clerk and Recorder for real estate and consumer debts. He said it would be difficult to specify if there was a support lien on the loan.

Mr. Pyfer made specific suggestions concerning HB 335. He said page 62, lines 14-17, is an amendment added in the House which is as an attempt to deal with the lien problem but does not go far enough. He said 1) The department must be required to send information, 2) A recording officer would be required to record information, for a Clerk and Recorder it would be in the real estate records and personal property records for consumer goods, 3) Add Secretary of State's Office to the subsection, and 4) The effective date of the lien should be the date it is entered into the record.

Mr. Pyfer said page 61, lines 6-8 would need to be amended to clarify that it refers to the date of record. He said page 63, lines 6-15, are the provisions relating to motor vehicles. Snowmobiles, boats, and ATVs were left out, and that was probably an oversight. If SB 373 passes this oversight would be resolved.

Chair Yellowtail asked Mr. Pyfer to write his suggested amendments down and give them to the legislative counsel.

Jock Anderson, Montana League of Savings Institutions, supported HB 335. He said SRS could receive over 100,000 requests concerning lien information if HB 335 passed in its current form. He said it would create a significant impact on lending institution and SRS. He said SRS already had letters of distraint at its disposal.

Roger Tippy, Independent Bankers, supported HB 335 and agreed with the previous testimony of lending institutions.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Doherty said Mr. Bennett made a very persuasive argument for the proliferation of liens. He asked if there was any way to accomplish the same objectives without involving the SRS in the lien business. He also asked how much a centralized lien system would cost. Mr. John McRae, CSED, said general judgment liens already existed, either administrative or judicial. The problem with those liens was they exist only in the county where the judgment was registered. HB 335 would remedy this by including all counties. As to liens for personal property, no new liens would be created since they fall under warrants of distraint.

The warrant of distraint would still be an essential part of HB 335. He said the ability to "get those liens" would be expanded. He said there are other statutes to collect child support such as income withholding. He said it was difficult to obtain other liens since a hearing process would be repeated. He submitted a document explaining the techniques for liens (Exhibit #2).

Sen. Doherty asked how many new people would HB 335 require and how much would it cost, could it be done with existing staff, and would it require more people. Ms. Wellbank said it could be done with existing staff, because CSED would no longer have to look in 56 counties for different liens, and the same staff would be involved.

Sen. Bartlett asked about the "liens filed in the 56 counties". Mr. McRae said the liens are filed in all 56 counties and the liens must be searched in all counties for real property.

Sen. Bartlett said Mr. Mcrae said the liens were created by filing, but the liens are created by law upon conclusion of certain departmental actions. She said it is completed by filing the lien with the department's register and a judgement is not required. She said the title companies and the lenders were saying there was no public notice, no constructive notice readily available as to the existence of the liens. She said the liens would not be in the Clerk of Court's office or the Clerk and Recorder's Office, but would be in the SRS office. A purchaser of real property would look in the county records. In relation to that information she asked what Mr. McRae would suggest to provide better public notice of the existence of liens. Mr. McRae said the issue was covered by the House amendment to make the information known to the county.

Sen. Bartlett referred to page, 62, line 14 - 17 and asked how that information would be made available to the Clerk and Recorder. Rep. Toole said the lien was created on page 62, line 4-7. The lien would be applicable to all real and personal property owned by the obligor in the state. A central lien registry and central filing would be created in this section and referenced in sections 19 and 20 as well. He said the lien would be in effect as the information was in the registry. The counties who requested that the information be sent to the Clerk and Recorder of the counties where there is real estate are not changing the effect of the lien. He said the lien would exist at a central location. Those who wish to obtain information will have to have access to the central registry to find out if there is a lien on a particular piece of property based upon a child support debt.

Sen. Bartlett said she had a number of questions concerning liens, but would hold them due to time limitations.

Sen. Towe asked how important the lien provisions to HB 335. Rep. Toole said there are different areas within the bill that

needed to be passed, regardless of the lien provisions. Sen. Towe asked if HB 335 should be passed, possibly excluding the lien procedures. Rep. Toole said passage without the lien procedures would be acceptable, if necessary. He said, however, he would like to work with Sen. Bartlett and the Committee to work on the lien procedure, since HB 335 provides a significant enforcement tool.

Sen. Towe said other creditors do not have this type of authority and why should that authority be given to the SRS. He said "We don't ask them to go to a court to get a judgement like every other creditor and we don't make a lien on any other personal property, but HB 335 would do that". He said, for example page 62 at the bottom, if someone sold me property, and the purchaser did not have any idea they were in arrears, the department would serve a notice saying you are holding that person's property you better turn it over. There would be no opportunity to go to court, no opportunity to challenge it. He asked Rep. Toole if he thought that was right. Rep. Toole said every creditor in the state would be able to avail themselves of the secured transaction laws that enable people to use a centralized lien registry to record the amount of their debt, to give them free position to recover the property as collateral, and to be made whole using the property they hold as collateral. Unfortunately the women of this state do not have that right. They do not have the ability to trace property moved from one county to another. The women must rely on attorneys who have no access to the information that the secured creditors have. Women are gradually being empowered to acquire information and get at property that should be subject to execution. Rep. Toole said a centralized system, or something like it, would be needed for the department to get at the obligor that has untitled property, and is hiding that property.

Sen. Towe asked Mr. Tippy about the bottom of page 25 and the top of page 26. He said an investigative subpoena system was created under 46-4-301 which was a criminal code. He asked if the SRS would then become a criminal justice agency. Mr. Tippy said title 46 is a criminal procedure; which was the main reference for obtaining an investigative subpoena by a judge without discovery going on without a lawsuit being filed. He said the department did have criminal powers under the child support laws. The intent of the amendment was for the division to have the status of a prosecutor for the purpose of submitting an affidavit through the district judge.

Sen. Blaylock said HB 335 was enormously complex and controversial and the Committee had more questions. He suggested a subcommittee to further explore the matter. Chair Yellowtail said he would consider that as the Committee approached executive action.

Closing by Sponsor:

Rep. Toole said HB 335 needs to pass. He said the statute of limitation changes, tribal court jurisdiction, extending the period of disabled people to receive support, all need to be addressed.

Rep. Toole addressed the lien issue. He said there is a trend in law toward centralized liens. In 1991, the Uniform Commercial Code was revised, moving away from county filing toward centralized state filing to provide accessibility towards information regarding debts. He said economic decisions can then be made about property located in counties located other than where the request for information originates. He said \$100 million of child support debt remains unpaid, and HB 335 would be one of the single most important tools to address this problem. He supported Sen. Blaylock's request for a subcommittee to look at this issue. He invited the bankers who did not testify in the House to participate in that process. He said he did not want to abandon the lien portions of HB 335.

HEARING ON HB 228**Opening Statement by Sponsor:**

Rep. Toole, District 60, said HB 228 was a uniform act. He said the Uniform Reciprocal Enforcement Support Act (URESА) would be replaced by Uniform Interstate Family Support Act (UIFSA). HB 228 would allow counties to collect interstate child support debt. URESА, initiated in the 1970s, was no longer effective. URESА no longer dealt with multiple court orders issued from various courts in more than one state. No formal method exists to determine which states' court order should be enforced, or what credits should be given to the judgments issued in another state. He said the county attorneys of Montana have gradually stopped using URESА, since it is ineffective. The Conference of Commissioners on State Laws recognized it was a national problem and came up with UIFSA.

Proponents' Testimony:

Mary Ann Wellbank, Child Support Enforcement Division (CSED), supported HB 228. She said it would resolve a lot of the jurisdictional conflicts which are encountered where the obligor moves from state to state. A new order can be issued in each state and it is difficult to determine which order is in effect.

Opponents' Testimony:

None

CHILD SUPPORT ENFORCEMENT DIVISION OF SRS
Mary Ann Wellbank, Administrator

The Child Support Enforcement Division urges "DO PASS" on the following legislation, which will significantly improve child support enforcement in Montana and help us fill the gaps in services we provide to Montana children who depend upon us.

BILLS:

HB 228	Toole
HB 335	Toole (On behalf of SRS)
HB 482	Bohlinger
SB 150	Bartlett (On behalf of SRS)
SB 217	Nathe (Grosfield) (On behalf of SRS)
SB 392	Waterman

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 3-18-93

BILL NO. HB 335

SUMMARY:

HB 228 - Uniform Interstate Family Support Act - resolves numerous interstate jurisdictional problems- may interstate cases have multiple child support orders issued by different states at different times. The bill specifies which order is enforceable.

HB 335 - CSED "Omnibus Bill". Has many necessary clean-up and efficiency provisions. See attached summary. Codification instruction coordinates amendment of 40-5-118 with HB 228.

HB 482 - 3 of the 4 main provisions are recommended by U.S. Interstate Commission on Child Support in its report to Congress - employer reporting of new hires, hospital paternity establishment, suspension of state issued licenses. Identical process for license suspension as SB 217, although covers more state issued licenses. Bill also improves Civil Contempt and makes it a more useful and effective tool.

SB 150 - Necessary legislation to achieve conformity with fed regs.

SB 217 - CSED bill to suspend professional and occupational licenses for delinquencies. Has built in due process and other safeguards which opportunity for hearing, repayment agreement, or "stay" of suspension in cases where suspension would cause financial hardship. Should be a very effective tool for enforcement of obligations of self-employed professionals who can afford to pay. Purpose is not to hurt person's ability to earn income, but to motivate repayment. HB 482 has identical license suspension process, although HB 482 encompasses all state licenses. If HB 482 is enacted, SB 217 becomes void.

SB 392 - Seek work requirements, lottery lien and most important, enhances criminal non-support to make laws more effective

HB 335 "AT A GLANCE"

DO PASS

An Act To Improve Efficiency and Effectiveness of Child Support Enforcement

- 1. Providing for Additional Fees, Statutorily Appropriating Fees & Penalties**
Section 14: Expands CSED ability to develop regulations to charge fees to both obligors, and obligees, when appropriate or when neither party is "at fault"
- 2. Requiring Notice to CSED when Notice Required to Department**
Sections 11 and 25: Requires legal notices to be served on CSED rather than Department in general. Assures that CSED receives notices promptly.
- 3. Defining Support Order to Include Tribal Courts**
Section 10: Clarifies ambiguity in law to allow CSED to continue to enforce orders of tribal courts in cases where CSED has jurisdiction. Does not expand jurisdiction
- 4. Extending Services to Children Over Age 18**
Section 10: Redefines child to include 19 year olds, plus mentally or physically handicapped children over 18. Many support orders go beyond the age of 18 for students or handicapped children, yet the division cannot enforce them.
- 5. Requiring Private Businesses to Share Information**
Section 12: Requires businesses to provide information to assist the CSED in the location of an obligor or the obligor's assets.
- 6. Allowing Child Support to Follow Child**
Sections 8 & 24: Physical custody of some children frequently changes from a mother to a grandparent to an aunt. Allows support to follow child when physical custody changes without need for modification of order.
- 7. Enhancing Existing Support Liens on Real and Personal Property**
Sections 19, 20 & 27: Creates centralized record of liens in CSED, but amended language neuters this.
- 8. Providing Administrative Contempt Authority**
Section 16: Gives the CSED authority to enforce its own orders by providing for fines of up to \$500 for obligors who ignore orders to pay support.
- 9. Consolidating and Standardizing Statutes of Limitations**
Sections 2 - 7, & 21: Current statutes of limitations vary and provide incentive for obligor to evade payment until limitation is reached. Will standardize statutes to uniform period of 10 years after support order is terminated
- 10. Distribute Income Withholding Payments between Multiple Obligees**
Section 22: Allows the division to develop rules to distribute collections from an obligor's income to all the obligor's children of multiple obligees
- 11. Eliminating Obsolete Provisions**
Section 9: Housekeeping. Part of section 9 amending 40-5-118, MCA becomes void if HB 228 (Uniform Interstate Family Support Act) passes.
- 12. Correcting Inconsistent Provisions**
Section 18: Conforms two contradictory statutes with intent of law
- 13. Conforming Income Withholding Periods to Obligor Pay Periods**
Sections 8 & 23: Makes it easier for employers to comply with withholding requirements by permitting weekly or bi-weekly withholding of monthly ordered amounts.
- 14. Payment of Debts due the Department**
Section 28: Requires written agreement of the department before a debt can be considered paid in full. Protects department. Simple (accidental) endorsement on back of check won't suffice as agreement.

EXHIBIT 1
DATE 3-18-93
HB 335

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Facts about the Division to Support Budget and Legislation

- Montana's Child Support Enforcement program is an important cornerstone of welfare reform. Shifting the burden for supporting dependent children away from taxpayers and back to financially able parents sends a clear and responsible message as well as raising needed revenue for this department and the state. The program permits repayment of monies spent on AFDC benefits, and helps keep borderline non-AFDC families off welfare. Once child support income becomes regular, many families are able to make the transition from welfare dependency to self-sufficiency.
- The division generates sufficient income through collections and federal matching funds to fully support its operations. For the most part, division funding is 66% federal; and 34% state special revenue. The division currently handles 38,000 cases, and cases are growing at a rate of 500 new cases per month. Caseload is projected to reach 53,356 cases within the next two and a half years. Greater efficiencies and legislative enhancements are needed to address the growing demand for services.
- The program receives no general fund dollars. In fact, last year the program raised and returned \$800,000 to the general fund. Better services and more collections help offset rising general fund costs of welfare programs, and will allow more children to be supported by their parents.
- Last year, the CSED collected nearly \$20 million from parents responsible for paying child support, representing a \$12 million increase in collections since 1989. Of this, \$7.3 million was returned to the state and federal governments to help offset AFDC payments made to families, and \$12.1 million was forwarded to custodial parents who do not receive AFDC. Currently, \$100 million in past due support is owed in Montana!
- In addition to its collections, the CSED actually saves Montana taxpayers money. National statistics show that for every \$5.00 of child support collected for families who aren't on AFDC, \$1.00 in public welfare benefits is saved. For last year, this cost avoidance translated to a savings of \$2.42 million for Montana citizens. Additionally, the division achieved savings of \$1,000,000 in Medicaid costs by identifying private insurers responsible for childrens' medical coverage. The division also collects parental contributions on behalf of the Department of Family Services
- Out-of-wedlock births continue to grow. Currently 25% of all Montana births are out-of wedlock.

Child Support Notes

Issue No. 8—July 1988

SENATE JUDICIARY

EXHIBIT NO.

DATE

3-18-93

FILE NO.

40-335

Property Liens—An Underutilized Collection Technique

The utility of liens for child support enforcement was characterized during congressional deliberations on the Child Support Enforcement Amendments of 1984 as "simple to execute and cost effective...and a catalyst for an absent parent to pay past due support in order to clear title to the property in question" (H.R. Rep. No. 527, 98th Cong., 1st Sess. 37 (1983).) Congress envisioned that liens would compliment the income withholding provisions of the new law and be particularly helpful in enforcing support payments owed by obligors with substantial assets or income but who are not salaried employees.

Based on this conviction, the Child Support Enforcement Amendments of 1984 required States to enact laws and implement "procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State." This can apply to such things as land, vehicles, houses, antique furniture, livestock, etc. The law further requires States to develop guidelines which are generally available to the public to determine whether a case is inappropriate for application of the lien procedures. Beyond this, the law and regulations are not prescriptive because lien practice is dependent upon State law and procedure.

Generally, a lien for delinquent child support is a statutorily created mechanism by which an obligee obtains a nonpossessory interest in property belonging to the obligor. The interest of the obligee is a "slumbering" interest which allows the obligor to retain possession of the property, but affects the obligor's ability to transfer ownership of the property to anyone else. When the obligee creates a legally enforceable lien it is called 'perfecting' the lien. A child support lien converts the obligee from an unsecured to a secured creditor. As such, it gives the obligee priority over unsecured creditors and subsequent secured creditors. In most States, this initial step in the lien procedure is by far the easiest—requiring minimal resources. In fact, in some States a lien is established automatically upon entry of a support order and the first incidence of noncompliance by the obligor. Frequently, the mere imposition of a lien will motivate the delinquent parent to do whatever is necessary to remove the lien (i.e., pay past due support.) When this is not the case, it may become necessary to 'enforce' the lien. Liens are not self executory. They merely impede the debtor's ability to convey property. If a lien exists, a debtor must satisfy the judgment before the property may be sold or transferred. An important point to stress here is that creditors need not wait for such a conveyance; they may enforce their judgment by execution and levy against the property if they

believe that the amount of equity in the property justifies execution.

(Note: In Chapter 5, "REMEDIES UNDER THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984" by Horowitz, Dodson and Haynes of National Legal Resource Center for Child Advocacy and Protection, American Bar Association, there is a detailed discussion of the principles and mechanics of liens procedures.)

While all States had, or since 1984 have established, lien provisions in compliance with Federal requirements, too few of these States have actively pursued the widespread use of this collection method for child support payments. Until recently, many States looked at the utility of liens with skepticism—assuming that the return did not justify the necessary investment of resources. As a matter of fact, OCSE audits of State operations indicate that, in far too many instances, States are not in compliance with the requirement to have child support specific liens procedures and guidelines. Furthermore, OCSE program reviews conducted in 1987 indicated that many others were not using the procedures and guidelines that they did have. Fortunately, an increasing number of States are now taking a second look; some States are taking the lead by trying or planning to try innovative approaches, projects and studies. For those who have progressed far enough along to have developed "a track record," the results are quite impressive.

To encourage other States to look at their current liens activities and consider aggressive ways to use this valuable tool on a large scale, we have asked some of the more active States to share information on what they are doing in this area. One of the most efficient ways of improving the liens process—and other procedures for that matter—is to network with States who have already initiated an approach you are considering. Find out how they got started, problems encountered, what worked well, etc. By using this information in conjunction with other techniques such as Project 1099, you should be in a better position to establish your own successful liens program. Project 1099 is an agreement between the Internal Revenue Service (IRS) and the Office of Child Support Enforcement (OCSE), allowing OCSE access to information on the IRS Wage and Information Document Master File. This file contains valuable locate and asset information culled from documents submitted to the IRS from a variety of sources, such as financial institutions, State unemployment insurance agencies, stock brokerage houses, gaming commissions and selected private employers. (For more information see Action Transmittal OCSE-AT-87-12, CHILD SUPPORT REPORT, April/May, 1988 and March 1986).

\$\$\$\$\$\$\$\$\$ WHAT SEVEN STATES ARE DOING WITH LIENS \$\$\$\$\$\$\$\$\$\$

California

In fiscal year 1988, PriceWaterhouse was awarded a contract by the Department of Social Services to analyze ways in which real property liens could best be used in California to maximize child support collections in a cost-effective manner. In addressing this question, the contractor was to identify estimated costs and benefits of each approach presented and to assess the impact on real estate transactions and the consumers involved in those transactions.

A primary objective was for the contractor to evaluate the feasibility of implementing a statewide lien registry for the purpose of recording each Title IV-D child support order/judgment, which would then constitute a lien against any real property owned by the judgment/debtor anywhere in California. (Currently it is necessary to file a lien in each of the State's fifty-eight counties to accomplish this.)

While one consideration in studying the various approaches to changes in the lien procedures was the program structure in California (the IV-D Program is supervised by the State Department of Social Services (DSS) and is locally administered by the Family Support Division (FSD) within each county District Attorney's Office), the primary consideration was to find a way to improve the current requirement of the county-by-county filing process. This process is further complicated by the fact that there are no uniform procedures for such filings.

For other States considering central registries, it would be valuable to keep in mind California's configuration—especially regarding program organization, the enormous population and the number of counties. Because of these factors, some of the problems which surfaced here may or may not be pertinent elsewhere.

The current lien system in the State collected \$5.6 million from 4,328 cases in 1986-87. This is only 1.3% of total collections, with less than one-half of one percent of the caseload affected, so there is obviously room for growth in this area.

Five alternatives for possible enhancements were considered as part of the contract study. These were: standardization of current practices; enhanced State support; establishment of a statewide centralized lien registry database; establishment of a statewide microfilm lien system; and establishment of a statewide real property database. Of the five alternatives, only one, the microfilm, was projected to have better cost benefit ratios than the current system.

The statewide lien registry, microfilm system, and real property database were all eliminated as viable options.

The centralized lien registry database was eliminated because it would involve significant changes in both title industry liability and practices, involve significant start-up and maintenance costs and administrative complications. Further, the fact that child support liens are only one element in a variety of different types of judgement liens that may affect individuals had to be considered. Any change in the practice of recording judgements for only child support would have broader implications for the use of statewide liens for all types of judgements and tax liens and might trigger much wider impacts than those studied in this project. It was concluded that there is currently insufficient data on real property ownership among the noncustodial parents to determine if the potential collections would justify the increased risks and

costs attendant to the adoption of a comprehensive statewide registration system.

The establishment of a statewide microfilm lien system was also dismissed as a short term option, even though the projected cost benefit was over 225% higher than the current system. Reasons included a significant increase in title industry liability and potential triggering of impacts beyond the scope of the study without data to judge potential collection increases.

A central database of all real property ownership in the State was not thought to be viable in the short term due to the constraints of the Privacy Act on obtaining and utilizing Social Security Numbers (SSNs) of property owners, which would be essential. Furthermore, the increase in workload involved in obtaining SSNs and substantial start-up and maintenance costs were cited as problems.

The two primary recommendations which did result from the study were to:

—Standardize county lien practices; and

—Provide enhanced State program support.

Standardizing county lien practices would require all counties to record judgments in all cases and to follow consistent practices in using liens as an enforcement tool. Enhanced State Program support generally involves DSS (and the California Parent Locator Service) taking a more proactive role by utilizing currently available data to aid counties in identifying potential real property interests of obligors.

The contractor concluded that if these goals are accomplished, it would seem reasonable for DSS or another agency within the State to once again consider some style of central registry to further enhance the liens program. An important consideration is ensuring the definition and gathering of data to enable the determination of potential collections which may be realized from utilization of a central registry, thus enabling an objective cost/benefit analysis.

It would be valuable for other States considering central registries to look into the California liens study and related findings in more detail. An important consideration in deciding the feasibility of merging data into one central source is the condition, availability and uniformity of existing information, as well as legal restrictions, etc., currently in your State.

Connecticut

While the liens procedures in Connecticut described below are fairly standard, that State's increased collections in 1987 is a good example of the advantage of directing resources in the use of this collection procedure.

The Connecticut Bureau of Child Support (BCS) is empowered to place liens on real and personal property belonging to delinquent child support obligors under Section 52-362(d) of the Connecticut General Statutes. Liens may be initiated when past due support arising from a court or support agreement order totals \$500 or more. They apply to a wide range of personal property (chattels), including vehicles and financial instruments, in addition to real estate. Once BCS files a notice of lien, obligors have 60 days in which to request an administrative hearing. If the decision to seek a lien is not reversed by the end of the 60-day period, the appropriate certificate of lien is filed.

As of December 30, 1987, a total of 897 child support liens were in effect in Connecticut, of which the majority (887) involved AFDC-related cases. For the twelve-month period ending June 30, 1987, proceeds from 202 successful lien actions filed in Connecticut child support cases totaled \$914,973 (a 268% increase over the previous year!)

Florida

In order to use its laws more effectively in child support enforcement cases, the Florida State Legislature is currently considering amendments to their lien laws. The proposed changes would create a central Statewide clearinghouse of all property and the names of its owners. It is anticipated that the clearinghouse would be maintained in the office of the Secretary of State. Some delay in beginning operations is anticipated by the proposal in order to provide funding for the clearinghouse and to allow time to develop the processes needed to provide information in a useful fashion to those needing access. Once the clearinghouse is operational, the clerks of each court in the State would transmit the required information (i.e., identity of property and owner's name) to the Secretary of State. Currently, the clerks of court automatically place a lien against any absent parent's property if that parent is more than 30 days late in making his/her child support payment. The notices to absent parents of liens procedures were issued in late July and August 1987. There is not enough data available yet to estimate the collection increase which could result from these changes.

Indiana

The Marion County Child Support Division is the test site for implementation of Indiana's new motor vehicle lien statute. Although previous law allows for the imposition of liens against real and personal property of delinquent child support obligors, the new law provides an automated mechanism for recording such child support liens on titles to motor vehicles acquired in Indiana. Working with representatives from the Bureau of Motor Vehicles, Prosecutor Stephen Goldsmith's office proposed the State enabling legislation that was passed by the 1987 Indiana General Assembly and became effective September 1, 1987. A computer tape match between the Child Support Division and the Bureau of Motor Vehicles' records of registered vehicles and obligors' names will be done twice weekly to identify delinquent obligors who have applied for certificate of title to a motor vehicle. The immediate effect of getting the child support lien recorded on the title is that the owner/obligor is unable to sell or trade the vehicle (or use it as collateral for a loan) until the child support delinquency is paid and the lien is released. In appropriate circumstances, the prosecutor's office may also choose to execute the lien (force a sale of the vehicle) to satisfy the delinquent support obligation. Such execution on a lien requires further court action and would prove most beneficial for those cases in which there is no prior lien holder to claim the proceeds of sale. Not only will this new motor "vehicle lien procedure provide another valuable tool for Indiana's child support enforcement effort, but it will also assist the State in its continuing efforts to gain greater public recognition of the child support problem and to promote the passage of stricter legislation to address it.

Maine

Maine is another State which has realized collections by exercising their lien procedures. In Maine, non-exempt* real and personal (cars, boats, farm vehicles, etc.) 'titled' property is subject to the lien process after a child support debt has been established. Such debts are established by either administrative or Court decisions or by a "notice of debt." The Notice of Debt is issued when the Department of Human Services (DHS) certifies that the responsible parent owes a debt accrued under a Court order. Twenty-one days after issuance of the administrative/Court decision or the Notice of Debt, a Certificate of Lien is filed against the responsible parent's property. If DHS suspects that collection of the debt may be in jeopardy (i.e., if there are indications the debtor is actively trying to sell property), it may seek a "Forthwith" lien filing, which waives the 21-day waiting period. A hearing process is available for obligors who disagree with the DHS finding.

Maine law gives DHS the option to seize property once a lien has been filed if it can be done without "breach of peace." In practical terms, DHS only seizes property in child support cases when it has reason to believe the debt collection is in jeopardy.

According to DHS records, during FY 1987, Maine filed 1,477 child support-related liens, of which 650 were settled. The State collected \$1,272,862 on these liens, an average of \$1,958 per settlement.

(*Maine law provides for certain exemptions (\$7,500 homestead/\$400 personal) from all lien/levy procedures.)

Massachusetts

The Commonwealth of Massachusetts recently enacted legislation (Chapter 490) which empowers the Department of Revenue (the State IV-D Agency) to place liens and levies on property without court involvement. The following are highlights pertinent to these provisions:

Upon determination by the IV-D Agency of the amount of an arrearage, the IV-D agency will issue notice to the absent parent/obligor, provide opportunity for administrative review and demand payment (including interest).

The written notice must state the Agency's intent to make a determination of delinquent child support, be sent by first class mail, be issued 30 days in advance of the date on which the determination will be made, specify the amount unpaid, indicate the dates on which such amounts were due and inform the obligor of the right to request an administrative review.

When the obligor does not request an administrative review the Agency determines the amount of delinquent child support by a review of its records. This determination constitutes an assessment and interest accrues from the date of the assessment. The obligor then has thirty days to pay the assessed amount plus interest.

When the obligor requests an administrative review, the Agency schedules and conducts the review and determines the amount of delinquent child support. The determination constitutes an assessment. Following the final decision, the obligor has 30 days to pay the assessed amount plus interest.

If the obligor neglects or refuses to pay within 30 days after the demand, the Agency places a lien on the obligor's property and rights to property valid for 6 years.

If the obligor neglects or refuses to pay within 10 days after the expiration of the 30 day period (afforded by the

EXHIBIT 2
3-18-93
10 225

demand), the Agency may collect the unpaid child support and any additional costs. The methods for collection could include levy/seizure and sale of obligor's property.

If IV-D finds that that collection is in jeopardy, notice and demand for immediate payment may be made.

A levy shall extend only to the property possessed and obligations existing at the time the levy was issued.

In any case in which the Agency may levy, it may seize and sell the property or rights to the property, whether real or personal, tangible or intangible.

When the obligor refuses to pay, the Agency may make demand on an organization such as a bank or life insurance company.

If the organization refuses to pay, that organization shall be liable for the amount assessed.

According to a March 23, 1988, article in the Quincy, Massachusetts PATRIOT LEDGER, "A Quincy man who owes thousands of dollars in child support payments yesterday became the first person in Massachusetts to have his car seized under the state's tough new child support law. Under a month-old law allowing the state to seize...." "It was the ninth time Leone has been arrested and brought to court for failing to make court-ordered child support payments for his 5-year old son...." The article went on to give the philosophy and expected impact of the new law and stated "The Revenue Department will sell Leone's (1986) car....proceeds will go toward the \$6,000 Leone owes the State Department of Public Welfare...."

New Jersey

New Jersey has developed an innovative project which is proving to be both an effective and efficient method in collecting past due child support and, equally important, one that can be easily transferred to other jurisdictions.

For further information or the names and telephone numbers of the appropriate OCSE Regional Office contacts concerning the above practices, call Evelyn Shepard, Child Support Enforcement Specialist, OCSE, Washington, D. C. (202) 245-1720.

With technical assistance provided by the OCSE Regional Office in New York City, a model "seizure of assets" project is currently being piloted in Mercer County (Trenton) which, combined with the State's successful upward modification program and their efforts to fully implement wage withholding, should significantly increase child support in that State. (The upward modification program is a concerted effort to increase support obligations in AFDC cases so that they are in line with State support guidelines. It has resulted in well over a 100% increase in obligations in the cases affected. For more information, see CHILD SUPPORT NOTES, Issue No. 5, March, 1987.)

New Jersey anticipates that the outcome of this "seizure of assets" effort will be a standardized process that will permit the implementation of similar projects in every county throughout the State following project completion in late Spring of 1988. It is anticipated that activities in other jurisdictions will begin immediately thereafter.

The project strategy calls for targeting cases with overdue support, entering child support judgments and recovering arrears through the use of liens. A key to the project is the asset information provided by Project 1099. The data thus made available (after verification in accordance with IRS safeguards) has enabled the State and counties to quickly identify bank accounts and other liquid assets and then take immediate steps to execute a lien to recover arrears. In fact, although the process will not be completely standardized until the completion of the Mercer County pilot program, several counties have already been successful in executing against bank accounts. One county, Camden, has also attached and collected on two IRA accounts, resulting in substantial cash payments.

The three counties currently entering judgments and seizing assets (particularly bank accounts) have processed a total of 207 cases, entered \$559,692 in judgments and received \$268,518 in cash payments.

**U.S. Department of
Health and Human Services**
Family Support Administration
OFFICE OF CHILD SUPPORT ENFORCEMENT
National Child Support Enforcement
Reference Center
6110 Executive Blvd.
Rockville, Maryland 20852



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Child Support Notes

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National Child Support Enforcement
Reference Center
Office of Child Support Enforcement
6100 Executive Blvd.
Rockville, Maryland 20852

ROLL CALL

SENATE COMMITTEE Judiciary

DATE 3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	✓		
Senator Doherty	✓		
Senator Brown	✓		
Senator Crippen	✓		
Senator Grosfield	✓		
Senator Halligan	✓		
Senator Harp	✓		
Senator Towe	✓		
Senator Bartlett	✓		
Senator Franklin	✓		
Senator Blaylock	✓		
Senator Rye	✓		

DATE 3/18/93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 638 HB 335 HB 228

HJR 22

Name	Representing	Bill No.	Check One	
			Support	Oppose
Ann Hays	DPS	HB 638	☒	☐
Przemyslaw Hertel	SELF	335	☒	☐
Donald Swanson	MT. LAND TITLE ASSN.	335	☒	☐
Bill Gowen	" "	"	☐	☐
Bob Pyter	MT Credit Unions Assn	335	☒	☐
GEORGE BENNETT	MONT. BANKERS ASSN	335	☒	☐
Jack Anderson	MT League of Sav. Inst.	335	☒	☐
Roger Tippy	MT Independent Bankers	335	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 27, 1993, at 3:10 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen, Sen. Rye

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: NONE
Executive Action: HB 405
HB 121
HB 323
HB 335
HB 482
HB 576
HB 216

EXECUTIVE ACTION ON HB 405

Discussion:

Senator Towe explained amendment hb040504.avl.

Motion:

Motion:

Senator Halligan moved to TABLE HB 323.

Discussion:

Senator Halligan told the Committee that existing law covers cruelty to animals. County attorneys could charge a person with several counts of cruelty to receive multiple consecutive sentences.

Vote:

The motion to table HB 323 CARRIED with Senators Doherty and Grosfield voting NO.

EXECUTIVE ACTION ON HB 335

Motion:

Senator Harp moved to TABLE HB 335.

Discussion:

Valencia Lane told the Committee that there is a conflict between HB 335 and HB 228. A coordination instruction needs to be amended on HB 335. Ms. Lane said if HB 335 is tabled in Committee, the coordination instructions should be included if it were ever to be removed from the table.

Motion/Vote:

Senator Towe made a substitute motion to AMEND HB 335. (Exhibit #5) The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harp moved to TABLE HB 335. The motion FAILED with Senator Towe and Harp voting YES.

Vote:

Senator Bartlett moved to AMEND HB 335. (Exhibit #6)

Discussion:

Senator Bartlett explained amendment hb033504.av1.

Senator Towe spoke in favor of the amendments.

Vote:

The motion to amend HB 335 CARRIED UNANIMOUSLY.

Motion:

Senator Towe moved to AMEND HB 335. (Exhibit #7)

Discussion:

Senator Towe explained amendment hb033502.avl.

Vote:

The motion to amend HB 335 CARRIED UNANIMOUSLY.

Motion:

Senator Bartlett moved to AMEND HB 335. (Exhibit #8)

Discussion:

Senator Bartlett explained amendment hb033503.avl.

Vote:

The motion to amend HB 335 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harp moved to TABLE HB 335. The motion CARRIED with Senators Bartlett, Brown, and Blaylock voting NO.

EXECUTIVE ACTION ON HB 482

Motion:

Senator Grosfield moved to AMEND HB 482. (Exhibit #9)

Discussion:

Senator Grosfield explained amendment hb048201.ajm.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

Motion:

Senator Grosfield moved HB 482 BE CONCURRED IN AS AMENDED.

Motion:

Senator Harp made a substitute motion to TABLE HB 482.

Discussion:

Senator Franklin asked Senator Harp his reasons for wanting to table HB 482. Senator Harp did not feel HB 482 was cleaned up

Amendments to House Bill No. 335
Third Reading Copy (BLUE)

Requested by Dept. of SRS
For the Committee on Judiciary

Prepared by Valencia Lane
March 11, 1993

1. Page 66, line 10.

Following: line 9

Insert: "NEW SECTION. Section 31. Coordination instruction. If House Bill No. 228 is passed and approved and if it includes a section that amends 40-5-118, then [section 9 of this act], amending 40-5-118, is void."

Renumber: subsequent section

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-27-93
BILL NO. HB335

Amendments to House Bill No. 335
Third Reading Copy

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 24, 1993

1. Page 62, line 11 through page 64, line 8.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

2. Page 64, line 20.

Strike: "(8)"

Insert: "(9)"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 3-27-93
BILL NO. 118335

Amendments to House Bill No. 335
Third Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 17, 1993

1. Page 25, line 24 through page 26, line 4.
Following: "SEEKS." on line 24
Strike: remainder of line 24 through "INFORMATION." on page 26,
line 4

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3-27-93
BILL NO. HB335

Amendments to House Bill No. 335
Third Reading Copy

Requested by Rep. Howard Toole
For the Committee on Judiciary

Prepared by Valencia Lane
March 17, 1993

1. Page 29, line 23.

Following: "obligee"

Strike: remainder of line 23 through "assistance"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3-27-93
BILL NO. HB335

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-27-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

TABLED BILL
SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 30, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 335 (third reading copy -- blue), respectfully report that House Bill No. 335 be amended as follows and as so amended be tabled.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 25, line 24 through page 26, line 4.

Following: "SEEKS." on line 24

Strike: remainder of line 24 through "INFORMATION." on page 26,
line 4

2. Page 29, line 23.

Following: "obligee"

Strike: remainder of line 23 through "assistance"

3. Page 62, line 11 through page 64, line 8.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

4. Page 64, line 20.

Strike: "(8)"

Insert: "(9)"

5. Page 66, line 10.

Following: line 9

Insert: "NEW SECTION. Section 31. Coordination instruction. If House Bill No. 228 is passed and approved and if it includes a section that amends 40-5-118, then [section 9 of this act], amending 40-5-118, is void."

Renumber: subsequent section

-END-

TABLED BILL
SENATE STANDING COMMITTEE REPORT

Page 2 of 2
March 30, 1993

Page 1 of 2
March 30, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 335 (third reading copy -- blue), respectfully report that House Bill No. 335 be amended as follows and as so amended be tabled.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 25, line 24 through page 26, line 4.

Following: "SEEKS." on line 24

Strike: remainder of line 24 through "INFORMATION." on page 26, line 4

2. Page 29, line 23.

Following: "obligee"

Strike: remainder of line 23 through "assistance"

3. Page 62, line 11 through page 64, line 8.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

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Renumber: subsequent section

-END-

M- Amd. Coord.
N- Sec. of Senate

Bartlett
Senator Carrying Bill

711607SC.Sma

HB 335
SENATE

1 HOUSE BILL NO. 335

2 INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

3 S. RICE, BOHLINGER, YELLOWTAIL,

4 WATERMAN, L. NELSON, PETERSON

5 BY REQUEST OF THE DEPARTMENT OF
6 SOCIAL AND REHABILITATION SERVICES

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
9 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND
10 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;
11 PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING
12 FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT
13 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND
14 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE
15 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE
16 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;
17 EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING
18 PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE
19 CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO
20 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON
21 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE
22 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES
23 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO
24 DISTRIBUTE INCOME-WITHOLDING PAYMENTS BETWEEN MULTIPLE
25 OBLIGEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF
2 LAW; CONFORMING INCOME-WITHOLDING PERIODS TO OBLIGOR PAY
3 PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302,
4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,
5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,
6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,
7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND
8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."
9

10 WHEREAS, it is necessary to draft a composite bill
11 containing unrelated sections in order to present the
12 proposed program improvements in a single, comprehensive
13 bill that promotes the needs of legislative energy,
14 efficiency, and economy by limiting the number of possible
15 bills and by reducing the need for hearings and readings on
16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact
18 the following legislation.

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 335

INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

S. RICE, BOHLINGER, YELLOWTAIL,

WATERMAN, L. NELSON, PETERSON

BY REQUEST OF THE DEPARTMENT OF

SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY; EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME-WITHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF LAW; CONFORMING INCOME-WITHOLDING PERIODS TO OBLIGOR PAY PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118, 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224, 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255, 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

WHEREAS, it is necessary to draft a composite bill containing unrelated sections in order to present the proposed program improvements in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

THEREFORE, the Legislature finds it appropriate to enact the following legislation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial

1 legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be
3 effective, a statutory appropriation must comply with both
4 of the following provisions:

5 (a) The law containing the statutory authority must be
6 listed in subsection (3).

7 (b) The law or portion of the law making a statutory
8 appropriation must specifically state that a statutory
9 appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing
11 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
12 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
13 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
14 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
15 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
16 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
18 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
19 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
20 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
21 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
22 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102;
23 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
24 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
25 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;

1 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

2 (4) There is a statutory appropriation to pay the
3 principal, interest, premiums, and costs of issuing, paying,
4 and securing all bonds, notes, or other obligations, as due,
5 that have been authorized and issued pursuant to the laws of
6 Montana. Agencies that have entered into agreements
7 authorized by the laws of Montana to pay the state
8 treasurer, for deposit in accordance with 17-2-101 through
9 17-2-107, as determined by the state treasurer, an amount
10 sufficient to pay the principal and interest as due on the
11 bonds or notes have statutory appropriation authority for
12 the payments. (In subsection (3): pursuant to sec. 7, Ch.
13 567, L. 1991, the inclusion of 19-6-709 terminates upon
14 death of last recipient eligible for supplemental benefit;
15 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
16 22-3-811 terminates June 30, 1993.)"

17 **Section 2.** Section 25-9-301, MCA, is amended to read:

18 **"25-9-301. Docketing of judgment -- lien -- expiration.**

19 (1) Immediately after the entry of the judgment in the
20 judgment book, the clerk must make the proper entries of the
21 judgment under appropriate heads in the docket kept by him
22 the clerk.

23 (2) From the time the judgment is docketed, it becomes
24 a lien upon all real property of the judgment debtor not
25 exempt from execution in the county, owned by him the

1 judgment debtor at the time or which he the judgment debtor
 2 may afterward acquire until the lien ceases. The Except as
 3 provided in subsection (3), the lien continues for 6 years
 4 unless the judgment be is previously satisfied.

5 (3) When the judgment is for the payment of child or
 6 spousal support, the lien continues for 10 years from the
 7 termination of the support obligation unless the judgment is
 8 previously satisfied."

9 **Section 3.** Section 25-9-302, MCA, is amended to read:

10 **"25-9-302. Filing of transcript of docket in another**
 11 **county -- lien -- expiration. (1)** A transcript of the
 12 original docket, certified by the clerk, may be filed with
 13 the district court clerk of any other county; and from the
 14 time of the filing, the judgment becomes a lien upon all
 15 real property of the judgment debtor, not exempt from
 16 execution, in such that county, owned by him the judgment
 17 debtor at the time or which he the judgment debtor may
 18 afterward and before the lien expires acquire. The Except as
 19 provided in subsection (2), the lien continues for 6 years
 20 unless the judgment be is previously satisfied.

21 (2) When the judgment is for the payment of child or
 22 spousal support, the lien continues for 10 years from the
 23 termination of the support obligation unless the judgment is
 24 previously satisfied."

25 **Section 4.** Section 25-9-303, MCA, is amended to read:

1 **"25-9-303. Filing of transcript of docket of federal**
 2 **court -- lien -- expiration. (1)** A transcript of the
 3 original docket of any judgment rendered in the circuit or
 4 district court of the United States, ninth circuit, district
 5 of Montana, certified by the clerk of ~~said~~ court, may be
 6 filed with the district court clerk of any county; and from
 7 the time of the filing, the judgment becomes a lien upon all
 8 real property of the judgment debtor, not exempt from
 9 execution, in such the county, owned by him the judgment
 10 debtor at the time or which he the judgment debtor may
 11 afterward and before the lien expires acquire. The Except as
 12 provided in subsection (2), the lien shall---continue
 13 continues for 6 years unless the judgment be is previously
 14 satisfied.

15 (2) When the judgment is for the payment of child or
 16 spousal support, the lien continues for 10 years from the
 17 termination of the support obligation unless the judgment is
 18 previously satisfied."

19 **Section 5.** Section 25-13-101, MCA, is amended to read:

20 **"25-13-101. Time limit for issuing execution. (1)** The
 21 Except as provided in subsection (2), the party in whose
 22 favor the judgment is given may, at any time within 6 years
 23 after the entry thereof, have a writ of execution issued for
 24 its enforcement.

25 (2) When the judgment is for the payment of child or

1 spousal support, the party in whose favor the judgment is
 2 given may, at any time within 10 years after the termination
 3 of the support obligation, have a writ of execution issued
 4 for its enforcement."

5 **Section 6.** Section 27-2-201, MCA, is amended to read:

6 "27-2-201. Actions upon judgments. (1) The Except as
 7 provided in subsection (3), the period prescribed for the
 8 commencement of an action upon a judgment or decree of any
 9 court of record of the United States or of any state within
 10 the United States is within 10 years.

11 (2) The period prescribed for the commencement of an
 12 action upon a judgment or decree rendered in a court not of
 13 record is within 5 years. The cause of action is deemed
 14 considered, in such that case, to have accrued when final
 15 judgment was rendered.

16 (3) The period prescribed for the commencement of an
 17 action to collect past-due child or spousal support that has
 18 accrued after October 1, 1993, under an order entered by a
 19 court of record or administrative authority is within 10
 20 years of the termination of support obligation."

21 **Section 7.** Section 27-2-211, MCA, is amended to read:

22 "27-2-211. Actions to enforce penalty or forfeiture or
 23 other statutory liability. (1) Within 2 years is the period
 24 prescribed for the commencement of an action upon:

25 (a) a statute for a penalty or forfeiture when the

1 action is given to an individual or to an individual and the
 2 state, except when the statute imposing it prescribes a
 3 different limitation;

4 (b) a statute or an undertaking in a criminal action
 5 for a forfeiture or penalty to the state;

6 (c) a liability created by statute other than:

7 (i) a penalty or forfeiture; or

8 (ii) a statutory debt created by the payment of public
 9 assistance.

10 (2) The period prescribed for the commencement of an
 11 action by a municipal corporation for the violation of any
 12 city or town ordinance is within 1 year.

13 (3) Notwithstanding any other provision of this
 14 chapter, actions against directors or stockholders of a
 15 corporation to recover a penalty or forfeiture imposed or to
 16 enforce a liability created by law must be brought within 3
 17 years after the discovery by the aggrieved party of the
 18 facts upon which the penalty of forfeiture attached or the
 19 liability was created.

20 (4) Unless fraud is involved or unless a support
 21 obligation has been entered, an action to enforce a
 22 statutory debt created by the payment of public assistance
 23 must be brought within 5 years from the date the debt
 24 arises. If fraud is involved, an action must be brought
 25 within 5 years of the discovery of the fraud. If a support

1 obligation has been entered, an action must be brought
 2 within 10 years of the termination of support obligation."

3 **Section 8.** Section 40-4-204, MCA, is amended to read:

4 "40-4-204. Child support -- orders to address health
 5 insurance -- withholding of child support. (1) In a
 6 proceeding for dissolution of marriage, legal separation,
 7 maintenance, or child support, the court shall order either
 8 or both parents owing a duty of support to a child to pay an
 9 amount reasonable or necessary for his the child's support,
 10 without regard to marital misconduct.

11 (2) The court shall consider all relevant factors,
 12 including:

- 13 (a) the financial resources of the child;
- 14 (b) the financial resources of the custodial parent;
- 15 (c) the standard of living the child would have enjoyed
 16 had the marriage not been dissolved;
- 17 (d) the physical and emotional condition of the child
 18 and his the child's educational and medical needs;
- 19 (e) the financial resources and needs of the
 20 noncustodial parent;
- 21 (f) the age of the child;
- 22 (g) the cost of day care for the child;
- 23 (h) any custody arrangement that is ordered or decided
 24 upon; and
- 25 (i) the needs of any person, other than the child, whom

1 either parent is legally obligated to support.

2 (3) (a) Whenever a court issues or modifies an order
 3 concerning child support, the court shall determine the
 4 child support obligation by applying the standards in this
 5 section and the uniform child support guidelines adopted by
 6 the department of social and rehabilitation services
 7 pursuant to 40-5-209, unless the court finds by clear and
 8 convincing evidence that the application of the standards
 9 and guidelines is unjust to the child or to any of the
 10 parties or is inappropriate in that particular case.

11 (b) If the court does not apply these standards and
 12 guidelines to determine child support, it shall state its
 13 reasons for finding that the application of such the
 14 standards and guidelines is unjust to the child or a party
 15 or is inappropriate in that particular case.

16 (c) If the court does not order a parent owing a duty
 17 of support to a child to pay any amount for the child's
 18 support, the court shall state its reasons for not ordering
 19 child support.

20 (4) Each district court judgment, decree, or order
 21 establishing a final child support obligation under this
 22 title and each modification of a final order for child
 23 support must include a provision addressing health insurance
 24 coverage in the following cases:

- 25 (a) If either party has available through an employer

1 or other organization health insurance coverage for the
2 child or children for which the premium is partially or
3 entirely paid by the employer or organization, the judgment,
4 decree, or order may contain a provision requiring that
5 coverage for the child or children be continued or obtained.

6 (b) In the event that health insurance required in a
7 child support judgment, decree, or order becomes unavailable
8 to the party who is to provide it, through loss or change of
9 employment or otherwise, that party must, in the absence of
10 an agreement to the contrary, obtain comparable insurance or
11 request that the court modify the requirement.

12 (c) All temporary child support orders must contain a
13 provision requiring the party who has health insurance in
14 effect for the child or children of the parties to continue
15 the insurance coverage pending final disposition of the
16 case.

17 (d) The parties may by written agreement provide for
18 the health care coverage required by this section, subject
19 to the approval of the court.

20 (e) Unless otherwise provided in the decree, the health
21 care coverage required by this section is in addition to and
22 not in substitution, in whole or in part, for the child
23 support obligation.

24 (5) (a) Unless the court makes a written exception
25 under 40-5-315 or 40-5-411 and the exception is included in

1 the support order, a support obligation established by
2 judgment, decree, or order under this section, whether
3 temporary or final, and each modification of an existing
4 support obligation under 40-4-208 must be enforced by
5 immediate or delinquency income withholding, or both, under
6 Title 40, chapter 5, part 3 or 4. A support order that omits
7 the written exceptions provided in 40-5-315 or 40-5-411 or
8 that provides for a payment arrangement inconsistent with
9 this section is nevertheless subject to withholding for the
10 payment of support without need for an amendment to the
11 support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income
13 withholding, the district court judgment or order must
14 include a warning statement that if the obligor is
15 delinquent in the payment of support, the obligor's income
16 may be subject to income withholding procedures under Title
17 40, chapter 5, part 3 or 4. Failure to include a warning
18 statement in a judgment or order does not preclude the use
19 of withholding procedures.

20 (c) After October 1, 1993, if a support order subject
21 to income withholding is expressed in terms of a monthly
22 obligation, the order may be annualized and withheld on a
23 weekly or biweekly basis, corresponding to the obligor's
24 regular pay period.

25 (6) For the purposes of income withholding under

1 subsection (5), every district court judgment, decree, or
 2 order that establishes or modifies a child support
 3 obligation must include a provision requiring the parent
 4 obligated to pay support to inform the court and, if the
 5 department of social and rehabilitation services is
 6 providing services under Title IV-D of the Social Security
 7 Act for the enforcement of the judgment, decree, or order,
 8 the department, of the following:

9 (a) the name and address of the parent's current
 10 employer;

11 (b) whether the parent has access to health insurance
 12 through an employer or other group; and

13 (c) if insurance coverage is available, the health
 14 insurance policy information.

15 (7) If the department of social and rehabilitation
 16 services is providing or later provides support enforcement
 17 services under Title IV-D of the Social Security Act, each
 18 district court order or modification of an order must
 19 contain a statement providing that the noncustodial parent,
 20 without further order of the court, is required to obtain
 21 and maintain health insurance coverage as provided in
 22 40-5-208. Failure to include a warning statement in the
 23 judgment or order does not preclude the imposition of
 24 sanctions under 40-5-208.

25 (8) Each district court judgment, decree, or order

1 establishing a final child support obligation under this
 2 part and each modification of a final order for child
 3 support must contain a statement that the order is subject
 4 to review and modification by the department of social and
 5 rehabilitation services upon the request of the department
 6 or a party under 40-5-271 through 40-5-273 when the
 7 department is providing services under Title IV-D of the
 8 Social Security Act for the enforcement of the order.

9 (9) Child support ordered on behalf of a minor child
 10 must be paid to:

11 (a) the legal custodian of the minor child;

12 (b) (i) any other person, organization, or agency
 13 having legal physical custody of the minor child under a
 14 legal assignment of rights; or

15 (ii) the court for the benefit of the minor child;

16 (c) any other person or agency designated as caretaker
 17 of the minor child by agreement of the legal custodian; or

18 (d) any assignee or other person, organization, or
 19 agency authorized to receive or collect child support."

20 **Section 9.** Section 40-5-118, MCA, is amended to read:

21 **"40-5-118. State information agency.** (1) The state
 22 department of social and rehabilitation services is
 23 designated as the state information agency under this part.

24 (2) It shall:

25 (a) compile a list of the courts and their addresses in

1 this state having jurisdiction under this part and transmit
 2 it to the state information agency of every other state
 3 which that has adopted this or a substantially similar law;
 4 and Upon the adjournment of each session of the legislature
 5 the agency shall distribute copies of any amendments to this
 6 part and a statement of their effective date to all other
 7 state information agencies.

8 (b) maintain a register of lists of courts received
 9 from other states and transmit furnish, upon request, copies
 10 thereof of the list promptly to every court in this state
 11 having jurisdiction under this part; and.

12 (c) forward to the court in this state which has
 13 jurisdiction over the obligor or his property petitions,
 14 certificates, and copies of the reciprocal enforcement of
 15 support act it receives from courts or information agencies
 16 of other states.

17 (3) if the state information agency does not know the
 18 location of the obligor or his property in the state and no
 19 state location service is available, it shall use all means
 20 at its disposal to obtain this information, including the
 21 examination of official records in the state and other
 22 sources such as telephone directories, real property
 23 records, vital statistics records, police records, requests
 24 for the name and address from employers who are able or
 25 willing to cooperate, records of motor vehicle license

1 offices, requests made to the tax offices both state and
 2 federal where such offices are able to cooperate, and
 3 requests made to the social security administration as
 4 permitted by the Social Security Act, as amended.

5 (4) After the deposit of three copies of the petition
 6 and certificate and one copy of the reciprocal enforcement
 7 of support act of the initiating state with the clerk of the
 8 appropriate court, if the state information agency knows or
 9 believes that the prosecuting attorney is not prosecuting
 10 the case diligently, it shall inform the attorney general
 11 who may undertake the representation."

12 Section 10. Section 40-5-201, MCA, is amended to read:

13 "40-5-201. Definitions. As used in this part, the
 14 following definitions apply:

15 (1) "Alleged father" means a man who is alleged to have
 16 engaged in sexual intercourse with a child's mother during a
 17 possible time of conception of the child or a man who is
 18 presumed to be a child's father under the provisions of
 19 40-6-105.

20 (2) (a) "Child" means any person under 18 years of age
 21 who is not otherwise emancipated, self-supporting, married,
 22 or a member of the armed forces of the United States, any
 23 person under 19 years of age and still in high school, or
 24 any person who is mentally or physically incapacitated if
 25 the incapacity began prior to the person's 18th birthday and

for whom:

(a)(i) support rights are assigned under 53-2-613;

(b)(ii) a public assistance payment has been made;

(c)(iii) the department is providing support enforcement services under 40-5-203; or

(d)(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or ~~his~~ the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or

children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the

1 amount created by:

2 (a) the failure to provide support to a child under the
3 laws of this or any other state or a support order; or

4 (b) a support order for spousal maintenance if the
5 judgment or order requiring payment of maintenance also
6 contains a judgment or order requiring payment of child
7 support for a child of whom the person awarded maintenance
8 is the custodial parent.

9 (14) "Support order" means an order providing a
10 determinable amount for temporary or final periodic payment
11 of funds for the support of a child, that is issued by:

12 (a) a district court of this state;

13 (b) a court of appropriate jurisdiction of another
14 state, Indian tribe, or foreign country;

15 (c) an administrative agency pursuant to proceedings
16 under this part; or

17 (d) an administrative agency of another state, Indian
18 tribe, or foreign country with a hearing function and
19 process similar to those of the department under this part.

20 (15) "IV-D" means the provisions of Title IV-D of the
21 Social Security Act and the regulations promulgated
22 thereunder."

23 **Section 11.** Section 40-5-202, MCA, is amended to read:

24 "40-5-202. Department of social and rehabilitation
25 services -- powers and duties regarding collection of

1 support debt. (1) The department may take action under the
2 provisions of this part, the abandonment or nonsupport
3 statutes, the Uniform Parentage Act established in Title 40,
4 chapter 6, part 1, and other appropriate state and federal
5 statutes to ~~ensure--that--the--parent--or--other--person~~
6 ~~responsible-pays-for-the-care,-support,-or-maintenance-of--a~~
7 ~~child~~ provide IV-D services if the department:

8 (a) receives a referral from the department of social
9 and rehabilitation services or the department of family
10 services on behalf of the child;

11 (b) is providing child support enforcement services
12 under 40-5-203; or

13 (c) receives an interstate referral, whether under the
14 Revised Uniform Reciprocal Enforcement of Support Act or an
15 interstate action by a Title IV-D agency of another state.

16 (2) ~~if--the--department--is--providing--child---support~~
17 ~~enforcement--services--for--a--child--under--this--part,-the~~
18 ~~department-becomes-trustee-of-any-cause--of--action--of--the~~
19 ~~child--or-the-obligee-to-recover-support-due-to-the-child-or~~
20 ~~obligee-from-the--obligor,-The--department--may--bring--and~~
21 ~~maintain--the--action--in-its-own-name-or-in-the-name-of-the~~
22 ~~obligee-~~ A verified statement, filed by the department, that
23 it is providing services is prima facie evidence of its
24 authority to act. The department may initiate, participate
25 in, or exercise any remedy available in a judicial or an

1 administrative action on the same basis as any other party.

2 (3) The department has the power of attorney to act in
3 the name of any obligee to endorse and cash any and all
4 drafts, checks, money orders, or other negotiable
5 instruments received by the department on behalf of a child.

6 ~~(4) For purposes of prosecuting any civil action, the~~
7 ~~department is a real party in interest if it is providing~~
8 ~~child support enforcement services under this part. The~~
9 ~~department is a party to and must be afforded notice and an~~
10 ~~opportunity to participate in any proceeding relating to~~
11 ~~paternity or to the establishment, enforcement, or~~
12 ~~modification of a support obligation, whether initiated by~~
13 ~~the obligee, the obligor, or the child. No obligee A~~
14 ~~recipient of services may not act to prejudice the rights of~~
15 ~~the department while such the services are being provided.~~

16 (5) If child support enforcement services are being or
17 have been provided under this part, no an agreement between
18 any obligee and any obligor either relieving an obligor of
19 any duty of support or purporting to settle past, present,
20 or future support obligations either as settlement or
21 prepayment may not act to reduce or terminate any rights of
22 the department to recover from the obligor for support debt
23 provided unless the department has consented to the
24 agreement in writing.

25 (6) The department may petition a court or an

1 administrative agency for modification of any order on the
2 same basis as a party to that action is entitled to do.

3 (7) The department is subrogated to the right of the
4 child or obligee to maintain any civil action or execute any
5 administrative remedy available under the laws of this or
6 any other state to collect a support debt. This right of
7 subrogation is in addition to and independent of the
8 assignment under 53-2-613 and the support debt created by
9 40-5-221.

10 (8) If public assistance is being or has been paid, the
11 department is subrogated to the debt created by a support
12 order and any money judgment is considered to be in favor of
13 the department. This subrogation is an addition to any
14 assignment made under 53-2-613 and applies to the lesser of:

- 15 (a) the amount of public assistance paid; or
- 16 (b) the amount due under the support order.

17 (9) The department may adopt and enforce the rules
18 necessary to carry out the provisions of this part.

19 (10) The department, for the purposes mentioned in this
20 part, through its director or the director's authorized
21 representatives, may administer oaths to certify official
22 acts and records, issue subpoenas, and compel witnesses and
23 the production of books, accounts, documents, and evidence.

24 (11) When a person is required to give notice to, serve,
25 or provide a written response to the department in a

proceeding concerning the establishment or enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division."

Section 12. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees and, EXCEPT AS PROVIDED IN SUBSECTION (6), all corporations, partnerships, associations, organizations, or individuals doing business in the state must provide on request any information, if known, concerning the location, income, and assets of an obligor, including:

(a) name;

(b) address of obligor's residence;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) name and address of any financial institution maintaining an account for the obligor;

(i) account number, account balances, account type, and the name under which the obligor has an interest in an account or deposit with a financial institution;

(j) address of any real property owned by the obligor; and

(k) any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.

(3) Except--as--provided--in--40-5-261--and--rules--adopted--under--40-5-262,--any--records--established--pursuant--to--the provisions--of--this--section--are--available--only--to--the department, A person who knowingly fails or refuses to provide information or who knowingly provides false or incorrect information concerning an obligor, in response to a request by the department, is subject to citation for contempt under the provisions of this part.

(4) Any information obtained by the department during

the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly.

(5) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

(6) IF A FINANCIAL INSTITUTION DEFINED IN 31-1-111 AS A REGULATED LENDER POSSESSES INFORMATION DESCRIBED IN SUBSECTION (2)(I), (2)(J), OR (2)(K) THAT RELATES TO A PERSON WHO IS THE SUBJECT OF AN INQUIRY BY THE DEPARTMENT, THE FINANCIAL INSTITUTION NEED ONLY TELL THE DEPARTMENT THAT IT POSSESSES INFORMATION THE DEPARTMENT SEEKS. THE DEPARTMENT MAY APPLY FOR AN INVESTIGATIVE SUBPOENA UNDER

46-4-301, STATING IN THE PROSECUTOR'S AFFIDAVIT IN SUPPORT OF THE SUBPOENA THAT ASSETS OR RESOURCES OF THE OBLIGOR DO OR MAY EXIST AND THAT THE ADMINISTRATION OF JUSTICE REQUIRES THE FINANCIAL INSTITUTION TO DISCLOSE THE INFORMATION."

Section 13. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support -- obligation enforcement -- sanctions. (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This

1 insurance is in addition to:

2 (i) an order requiring the obligee to maintain health
3 insurance coverage;

4 (ii) an agreement that the obligee will maintain health
5 insurance coverage; or

6 (iii) a failure or omission of the court order or
7 modification of an order to require health insurance
8 coverage.

9 (2) (a) If the department is providing child support
10 enforcement services and the obligor is required by an
11 existing district court order or an administrative order
12 under this section to provide health insurance coverage for
13 a child, the department shall also enforce the health
14 insurance obligation.

15 (b) To ensure that health insurance coverage is
16 available for the child, the obligor, upon written request
17 by the department, shall provide the name of the insurance
18 carrier, the policy identification name and number, the
19 names of the persons covered, and any other pertinent
20 information regarding coverage.

21 (3) (a) The department may issue a notice commanding
22 the obligor to appear at a hearing held by the department
23 and show cause why a sum of not more than \$100 should not be
24 assessed for each month health insurance coverage is not
25 secured or maintained if the department determines an

1 obligor has failed to:

2 (i) obtain or maintain health insurance coverage as
3 required under this section; or

4 (ii) provide information required under this section.

5 (b) If the department finds, after hearing or the
6 obligor's failure to appear, that health insurance coverage
7 has not been obtained or maintained or that the obligor has
8 failed to provide the information required, the department
9 may assess against the obligor not more than \$100 for each
10 month health insurance coverage has not been obtained or
11 maintained or for each month information has not been
12 provided. ~~Such~~ The amounts may be enforced by any
13 administrative remedy available to the department for the
14 enforcement of child support obligations, including warrant
15 for distraint provided for in ~~40-5-241~~ 40-5-247 and income
16 withholding provided for in Title 40, chapter 5, part 4.

17 (4) The health insurance coverage must be provided
18 under this section even though it may reduce the amount of
19 the child support obligation or reduce the obligor's ability
20 to pay child support as required.

21 (5) Any amounts collected pursuant to this section must
22 be returned to the general fund to help offset expenditures
23 for medicaid."

24 **Section 14.** Section 40-5-210, MCA, is amended to read:

25 **"40-5-210. Standardized fee schedule -- rules.** (1) The

1 department shall by rule establish a standardized schedule
 2 of fees for the recovery of administrative costs and
 3 expenses of child support enforcement. The fees may be
 4 recovered from an obligor if the obligor's failure or
 5 refusal to support a child makes it necessary for the
 6 department to provide child support enforcement services
 7 under this part. The fees must be commensurate with costs or
 8 an average of the expenditures related to specific or
 9 routine activities may charge an application fee to each
 10 person applying for services under 40-5-203, except that the
 11 fee may not be charged to persons who receive continuing
 12 services under 40-5-203(3). The application fee may be:

- 13 (a) a flat dollar amount; or
- 14 (b) an amount based on a sliding fee schedule that is
 15 based on the applicant's income level.
- 16 (2) The department may charge a handling fee for each
 17 payment of support collected on behalf of any obligee who is
 18 not a recipient of public assistance. The department may
 19 withhold the fee from the support payment before
 20 distribution to the obligee.
- 21 (3) The department may charge an obligor a late payment
 22 fee for each late payment of support collected on behalf of
 23 any obligee who is not a recipient of public assistance.
- 24 (4) The department may establish a fee schedule in
 25 order to recover costs and expenses in excess of the

1 application, handling, and late fees. The fees must be
 2 commensurate with costs or an average of the expenditures
 3 related to specific or routine activities.

4 (a) The department shall develop procedures for
 5 determining whether it is appropriate for either the obligor
 6 or the obligee to be responsible for payment of the fee. In
 7 developing the procedures, the department shall consider
 8 federal regulations promulgated under Title IV-D of the
 9 Social Security Act.

10 (b) In an action to establish paternity or to
 11 establish or enforce a child support obligation, whether in
 12 district court or by administrative process, the department
 13 must be awarded costs in the amount established in the fee
 14 schedule as part of any judgment, decree, or order in which
 15 whenever the department:

- 16 (i) is the prevailing party in the action; or
- 17 (ii) is not a party but incurs expenses and costs
 18 related to the action.

19 (3) Fees awarded under this section are in the nature
 20 of child support and are collectible in the same manner as a
 21 support order. The fee award may be collected separately or
 22 added to and collected with any balance due on a support
 23 debt.

24 (4) Collection of a fee award may not reduce any
 25 current child support payment due the obligee.

~~{5}--Arrearage-amounts-collected-that-include-a-fee-must
be-allocated-as-follows:~~

~~{a}--if-the-obligee-is-a-recipient-of-public-assistance,
the-amount-must-be-allocated-first-to-satisfy-the-fee:~~

~~{b}--if--the--obligee--is--not--a--recipient--of--public
assistance--the-first-10%-of-each-amount-collected--must--be
allocated-to-satisfy-the-fee:~~

(5) The department may collect the fees awarded under
this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the
department for the collection of child support arrearages;
or

(ii) deducted from any payments made by the obligor
before the payment is distributed to the obligee. Credit for
the payment must be reduced by the amount of the deduction
for the fee. The deduction for fees may not reduce any
current support due to the obligee. The deduction for a late
payment fee may not reduce any current or past-due support
due to the obligee.

(b) if the fee is owed by the obligee, the fee may be
collected separately through any remedy available to the
department for the collection of child support or the
department may withhold the fee amount out of any payment
collected on behalf of the obligee. The obligor must receive

full credit for the payment as if the withholding of fees
did not occur.

(6) The department, upon a showing of necessity, may
waive or defer any fee assessed under this section.

(7) The department may adopt rules necessary to
implement fee schedules under this section.

(8) The department may retain any fees collected under
this section to help offset administrative costs and
expenses of operating the child support enforcement program.
For this purpose, the fees are statutorily appropriated as
provided in 17-7-502."

Section 15. Section 40-5-224, MCA, is amended to read:

**"40-5-224. Finding of support liability based upon
payment of public assistance -- warrant for distraint --
bond to release warrant -- action to collect. (1) If the
department reasonably believes that the obligor is not a
resident of this state or is about to move from this state
or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~
or left, or has removed or is about to remove, secrete,
waste, or otherwise dispose of property which that could be
made subject to collection action to satisfy the support
debt, the department may issue a warrant for distraint
pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the
fair hearing or thereafter after the hearing, whether or not
appealed. ~~No-further~~ Further action may not be taken on the**

1 warrant until final determination after fair hearing or
 2 appeal. The department shall make and file in the record of
 3 the fair hearing an affidavit stating the reasons upon which
 4 the belief is founded. The obligor may furnish a bond, not
 5 to exceed the amount of the support debt, during pendency of
 6 the hearing or thereafter after the hearing, and in such
 7 that case warrants issued must be released. If the decision
 8 resulting from the hearing is in favor of the obligor, all
 9 warrants issued must be released.

10 (2) The department may commence action under the
 11 provisions of this part to collect the support debt on the
 12 date of issuance of the decision resulting from the
 13 hearing."

14 **Section 16.** Section 40-5-226, MCA, is amended to read:

15 "40-5-226. Administrative hearing -- nature -- place --
 16 time -- determinations -- failure to appear -- entry of
 17 final decision and order. (1) The administrative hearing is
 18 defined as a "contested case".

19 (2) At the discretion of the hearing officer, the
 20 administrative hearing may be held:

21 (a) in the county of residence or other county
 22 convenient to the obligor or obligee; or

23 (b) in the county in which the department or any of its
 24 offices are located.

25 (3) If a hearing is requested, it must be scheduled

1 within 20 days.

2 (4) The hearing officer shall determine the liability
 3 and responsibility, if any, of the obligor under the notice
 4 and shall enter a final decision and order in accordance
 5 with such the determination.

6 (5) If the obligor fails to appear at the hearing or
 7 fails to timely request a hearing, the hearing officer, upon
 8 a showing of valid service, shall enter a decision and order
 9 declaring the amount stated in the notice to be final.

10 (6) In a hearing to determine financial responsibility,
 11 the monthly support responsibility must be determined in
 12 accordance with the evidence presented and with reference to
 13 the scale of suggested minimum contributions under 40-5-214.
 14 The hearing officer is not limited to the amounts stated in
 15 the notice.

16 (7) Within 20 days of the hearing, the hearing officer
 17 shall enter a final decision and order. The determination of
 18 the hearing officer constitutes a final agency decision,
 19 subject to judicial review under 40-5-253 and the provisions
 20 of the Montana Administrative Procedure Act.

21 (8) A support order entered under this part must
 22 contain a statement that the order is subject to review and
 23 modification by the department upon the request of the
 24 department or a party under 40-5-271 through 40-5-273 when
 25 the department is providing services under IV-D for the

1 enforcement of the order.

2 (9) A support debt determined pursuant to this section
3 is subject to collection action without further necessity of
4 action by the hearing officer.

5 (10) A support debt or a support responsibility
6 determined under this part by reason of the obligor's
7 failure to request a hearing under this part or failure to
8 appear at a scheduled hearing may be vacated, upon the
9 motion of an obligor, by the hearing officer within the time
10 provided and upon a showing of any of the grounds enumerated
11 in the Montana Rules of Civil Procedure.

12 (11) Unless the hearing officer makes a written
13 exception under 40-5-315 or 40-5-411 and the exception is
14 included in the support order, every order establishing a
15 child support obligation, whether temporary or final, and
16 each modification of an existing child support order under
17 this part is enforceable by immediate or delinquency income
18 withholding, or both, under Title 40, chapter 5, part 4. A
19 support order that omits that provision or that provides for
20 a payment arrangement inconsistent with this section is
21 nevertheless subject to withholding for the payment of
22 support without need for an amendment of the support order
23 or for any further action by the hearing officer.

24 (12) For the purposes of income withholding provided for
25 in subsection (11), whenever the department establishes or

1 modifies a child support obligation, the department's order
2 must include a provision requiring the obligor, for as long
3 as the department is providing support enforcement services,
4 to keep the department informed of the name and address of
5 the obligor's current employer, whether the obligor has
6 access to health insurance through an employer or other
7 group, and, if so, the health insurance policy information.

8 (13) The hearing officer may:

9 (a) compel obedience to the hearing officer's orders,
10 judgments, and process and to any orders issued by the
11 department, including income-withholding orders issued
12 pursuant to 40-5-415;

13 (b) compel the attendance of witnesses at
14 administrative hearings;

15 (c) compel obedience of subpoenas for paternity blood
16 tests;

17 (d) compel the production of accounts, books,
18 documents, and other evidence; and

19 (e) punish for civil contempt. Contempt authority does
20 not prevent the department from proceeding in accordance
21 with the provisions of 2-4-104.

22 (14) A contempt occurs whenever:

23 (a) a person acts in disobedience of any lawful order,
24 judgment, or process of the hearing officer or of the
25 department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

(15) An affidavit of the facts constituting a contempt must be submitted to the hearing officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearing officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal

service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearing officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearing officer finds the alleged contemnor in contempt, the hearing officer may impose a penalty of not more than \$500 for each count found. The hearing officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The money collected as a penalty under this section is statutorily appropriated, as provided in 17-7-502, to the department to help offset expenditures for administrative

1 hearings conducted under this chapter."

2 **Section 17.** Section 40-5-227, MCA, is amended to read:

3 "40-5-227. Filing and docketing of final orders --
4 orders effective as district court decrees. (1) An abstract
5 of any final administrative order under this chapter may be
6 filed in the office of the clerk of the district court of
7 any county of Montana. The order, if approved, must be
8 docketed in the judgment docket of the district court. The
9 properly filed and docketed order has all the force, effect,
10 and attributes of a docketed order or decree of the district
11 court, including but not limited to lien effect and
12 enforceability by supplemental proceedings, writs of
13 execution, and contempt of court proceedings.

14 (2) A final administrative order that determines and
15 sets periodic support payments in the absence of a district
16 court order, when filed and docketed under this section, may
17 be modified by a district court order only as to
18 installments accruing after actual notice to the parties of
19 any motion for modification. The standard for any--such a
20 modification is that set forth in 40-4-208.

21 (3) The department may issue a warrant for distraint
22 based upon a properly filed and docketed order pursuant to
23 ~~40-5-241~~ 40-5-247."

24 **Section 18.** Section 40-5-232, MCA, is amended to read:

25 "40-5-232. Establishment of paternity -- notice of

1 paternity determination -- contents. (1) When the paternity
2 of a child has not been legally established under the
3 provisions of Title 40, chapter 6, part 1, or otherwise, the
4 department may proceed to establish paternity under the
5 provisions of 40-5-231 through 40-5-237. An administrative
6 hearing held under the provisions of 40-5-231 through
7 40-5-237 is a contested case within the meaning of 2-4-102
8 and is subject to the provisions of Title 2, chapter 4,
9 except as otherwise provided in 40-5-231 through 40-5-237.

10 (2) It is presumed to be in the best interest of a
11 child to legally determine and establish his paternity. A
12 presumption under this subsection may be rebutted by a
13 preponderance of the evidence.

14 (3) In any proceeding under 40-5-231 through 40-5-237,
15 if a man acknowledges his paternity of a child in writing
16 and such the acknowledgment is filed with the department,
17 the department may enter an order establishing legal
18 paternity. An acknowledgment is binding on a parent who
19 executes it, whether or not he the parent is a minor.

20 (4) The department shall commence proceedings to
21 establish paternity by serving on an alleged father a notice
22 of paternity determination. The department may not serve
23 such the notice unless it has:

24 (a) a sworn statement from the child's mother claiming
25 that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination ~~shall~~ must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he the alleged father is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

~~(iii) he may request a trial in district court to determine paternity before the final administrative decision is made upon receipt of the blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.~~

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 19. Section 40-5-242, MCA, is amended to read:

"40-5-242. Civil Notice of support lien -- civil liability upon failure to honor support lien or to comply with warrant or to honor assignment of wages for distraint.

(1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an

1 obligor. For this purpose, personal property includes the
 2 obligor's share of a decedent's estate, workers'
 3 compensation benefits, and any proceeds or potential
 4 proceeds from suits at law.

5 (2) Except as provided in subsection (3), A a person,
 6 firm,--corporation,--association,--political-subdivision,--or
 7 department--of--the--state or entity is liable to the
 8 department in an amount equal to 100% of the value of the a
 9 support debt--that--is--the--basis--of--the--distrain--or
 10 assignment--of--wages lien or warrant for distraint or the
 11 value of the--distrained real or personal property subject to
 12 a support lien or distrained by a warrant for distraint,
 13 whichever is less, together with costs, interest, and
 14 reasonable attorney fees, if the person or entity:

15 (1)--fails--or--refuses--to-deliver-property-pursuant-to
 16 the-order;

17 (2)(a) pays over, releases, sells, transfers, or
 18 conveys real or personal property subject to a support lien,
 19 to or for the benefit of the obligor, after the person or
 20 entity receives actual notice of filing of the support lien;
 21 or

22 (3)(b) fails or refuses to surrender upon demand
 23 property distrained--under--40-5-241 of an obligor when
 24 presented with a warrant for distraint by a sheriff or
 25 levying officer under the provisions of 40-5-247, or.

1 (4)--fails-or-refuses-to-honor-an--assignment--of--wages
 2 presented-by-the-department;

3 (3) A person or entity is not liable to the department
 4 under this section when:

5 (a) a written release or waiver of the support lien or
 6 warrant for distraint issued by the department has been
 7 delivered to the person or entity;

8 (b) a determination has been made in an adjudicative
 9 proceeding, either administrative or judicial, that a
 10 support lien does not exist or that the lien has been
 11 satisfied; or

12 (c) the property subject to a support lien has been
 13 transferred to, paid over to, or repossessed by a person or
 14 entity holding:

15 (i) a prior perfected lien;

16 (ii) a mortgage, the proceeds of which were used by the
 17 obligor to purchase real property; or

18 (iii) a perfected purchase money security interest, as
 19 defined by 30-9-107."

20 **Section 20.** Section 40-5-247, MCA, is amended to read:

21 "40-5-247. Filing-warrant-with-district-court----effect
 22 of--filing-----release Warrant for distraint -- effect --
 23 satisfaction of support lien -- redemption. (1)--After
 24 issuing-a-warrant,--the-department-may-file-the-warrant--with
 25 the--clerk--of--a--district--court.--The-clerk-shall-file-the

warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor.

(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a property docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

(1) The department may issue a warrant for distraint to execute support liens established by [section 28 27] or to enforce and collect any money obligation authorized under this chapter.

(a) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based.

(b) A warrant must be signed by the director of the department or the director's designee.

(c) The warrant must be for the amount of the support

lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(d) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(3)(2) (a) A copy of the filed warrant for distraint may be sent by the department to the sheriff or authorized agent levying officer. Upon receipt of a copy of the filed warrant, the sheriff or authorized agent levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or agent levying officer shall return a warrant, along with any funds collected, within 90 days of the receipt of the copy of the warrant.

(c) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

(c)(d) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given

1 notice of a support lien under 40-5-242.

2 (4) (a) Upon receiving payment in full of the unpaid
3 child--support warrant amount plus penalty and fees, if any,
4 and accumulated interest, the department shall release the
5 lien warrant.

6 (b) Upon receiving partial payment of the unpaid child
7 support warrant amount or if the department determines that
8 a release or partial release of the lien warrant will
9 facilitate the collection of the unpaid amount, penalty, and
10 interest, the department may release or may partially
11 release the lien--acquired--by--filing--the warrant for
12 distraint. The department may release the lien warrant if it
13 determines that the lien warrant is unenforceable.

14 (5) An obligor or other person or entity having an
15 interest in real or personal property levied upon by a
16 warrant for distraint at any time prior to sale of the
17 property may pay the amount of the support lien or other
18 money obligation and any costs incurred by the sheriff or
19 levying officer serving the warrant. Upon payment in full,
20 the property must be restored to the obligor or other person
21 and all proceedings on the warrant must cease.

22 (6) An obligor or other person or entity having an
23 interest in real property levied upon and sold by a sheriff
24 or levying officer pursuant to a warrant for distraint may,
25 within 240 days after sale of the property, redeem the

1 property by making payment to the purchaser in the amount
2 paid by the purchaser plus interest at the statutory
3 interest rate payable on judgments recovered in the district
4 court.

5 (7) At any time after distraint of property under a
6 warrant for distraint, the department may release all or
7 part of the seized property without liability if payment of
8 the support lien or other money obligation is assured or if
9 the action will facilitate collection of the support lien or
10 other money obligation. The release or return does not
11 operate to prevent future action to collect the warrant
12 amount from the same or other property.

13 (8) The department may issue a warrant for distraint to
14 collect a support lien or other money obligation under this
15 section at any time within the statutory limitation period
16 for enforcing and collecting delinquent child support.

17 (5)(9) The use of the warrant for distraint is not
18 exclusive, and the department may use any other remedy
19 provided by law for the collection of child support
20 amounts."

21 **Section 21.** Section 40-5-255, MCA, is amended to read:

22 **"40-5-255. Charging off child support debts as**
23 **uncollectible. (1) Any support debt due the department from**
24 **an obligor, which debt the department determines**
25 **uncollectible, may be transferred from accounts receivable**

1 to a suspense account and cease to be accounted as an asset.
 2 If a warrant for distraint has been filed and the support
 3 debt has subsequently been charged off as uncollectible, the
 4 department shall issue a release of lien.

5 (2) At any time after ~~6-years-from-the-date-a-support~~
 6 ~~debt-was-incurred~~ 10 years from the date of termination of
 7 the support obligation, the department may charge off as
 8 uncollectible any support debt upon which the department
 9 finds there is no available, practical, or lawful means by
 10 which the support debt may be collected. ~~No--proceedings A~~
 11 proceeding or action under the provisions of this part may
 12 not be begun after expiration of the ~~6-year~~ 10-year period
 13 to institute collection of a support debt. ~~Nothing-herein~~
 14 This part may not be construed to render invalid or
 15 nonactionable a warrant for distraint ~~filed-with--the--clerk~~
 16 of-court issued by the department prior to the expiration of
 17 the ~~6-year~~ 10-year period or an assignment of earnings
 18 executed prior to the expiration of the ~~6-year~~ 10-year
 19 period."

20 **Section 22.** Section 40-5-415, MCA, is amended to read:

21 "40-5-415. Order to withhold income -- rules. (1) When
 22 the requirements of this part have been met, the department
 23 shall serve an order or modification order to withhold and
 24 deliver income upon any payor or combination of payors. The
 25 order must:

1 (a) direct the payor and successor payors to withhold
 2 from the obligor's income each month the amount specified in
 3 the order if sufficient funds are available;

4 (b) direct the payor to deliver the amount withheld to
 5 the department in the same month in which the funds were
 6 withheld;

7 (c) state that the order is binding on the payor until
 8 further notice by the department;

9 (d) state the rights and duties of the payor under this
 10 part; and

11 (e) include a statement that the obligor is required
 12 under a support order to provide health insurance coverage
 13 for the obligor's child, if appropriate.

14 (2) An order or modification order to withhold and
 15 deliver the obligor's income made under this section is
 16 binding upon the payor immediately upon service of the order
 17 upon the payor. Service of the order or modification order
 18 to withhold may be made either personally or by certified
 19 mail.

20 (3) Whenever there is more than one payor, the
 21 department may, in its discretion, apportion the total
 22 amount to be withheld each month among payors. Whenever an
 23 obligor's income is subject to withholding for more than one
 24 obligee, the department may consolidate the payments
 25 received each month and distribute the income among the

1 obligees according to department rules."

2 **Section 23.** Section 40-6-116, MCA, is amended to read:

3 **"40-6-116. Judgment or order.** (1) The judgment or order
4 of the court determining the existence or nonexistence of
5 the parent and child relationship is determinative for all
6 purposes.

7 (2) If the judgment or order of the court is at
8 variance with the child's birth certificate, the court shall
9 order that a substitute birth certificate be issued under
10 40-6-123.

11 (3) (a) The judgment or order may contain any other
12 provision directed against the appropriate party to the
13 proceeding concerning the custody and guardianship of the
14 child, visitation privileges with the child, the furnishing
15 of bond or other security for the payment of the judgment,
16 or any other matter in the best interest of the child.

17 (b) Except when the financial responsibility of a
18 responsible parent is in the process of being determined
19 pursuant to the administrative procedure provided in
20 40-5-225, the judgment or order must contain a provision
21 concerning the duty of child support.

22 (c) The judgment or order may direct the father to pay
23 the reasonable expenses of the mother's pregnancy and
24 confinement.

25 (4) (a) Support judgments or orders ordinarily shall

1 must be for periodic payments which may vary in amount.

2 (b) In the best interest of the child, a lump-sum
3 payment or the purchase of an annuity may be ordered in lieu
4 of periodic payments of support.

5 (c) The court may limit the father's liability for past
6 support of the child to the proportion of the expenses
7 already incurred that the court ~~deems~~ considers just.

8 (5) In determining the amount to be paid by a parent
9 for support of the child and the period during which the
10 duty of support is owed, a court enforcing the obligation of
11 support shall consider all relevant facts, including:

12 (a) the needs of the child, including his medical
13 needs;

14 (b) the standard of living and circumstances of the
15 parents;

16 (c) the relative financial means of the parents;

17 (d) the earning ability of the parents;

18 (e) the need and capacity of the child for education,
19 including higher education;

20 (f) the age of the child;

21 (g) the financial resources and the earning ability of
22 the child;

23 (h) the responsibility of the parents for the support
24 of others;

25 (i) the value of services contributed by the custodial

1 parent;

2 (j) the cost of day care for the child; and

3 (k) any custody arrangement that is ordered or decided
4 upon.

5 (6) (a) Whenever a court issues or modifies an order
6 concerning child support, the court shall determine the
7 child support obligation by applying the standards in this
8 section and the uniform child support guidelines adopted by
9 the department of social and rehabilitation services
10 pursuant to 40-5-209, unless the court finds by clear and
11 convincing evidence that the application of the standards
12 and guidelines is unjust to the child or to any of the
13 parties or is inappropriate in that particular case.

14 (b) If the court does not apply these standards and
15 guidelines to determine child support, it shall state its
16 reasons for finding that the application of such the
17 standards and guidelines is unjust to the child or a party
18 or is inappropriate in that particular case.

19 (c) If the court does not order a parent owing a duty
20 of support to a child to pay any amount for the child's
21 support, the court shall state its reasons for not ordering
22 child support.

23 (7) The judgment or order concerning child support and
24 each modification of a judgment or order for child support
25 must include a provision addressing health insurance

1 coverage in the following cases:

2 (a) If either party has available through an employer
3 or other organization health insurance coverage for the
4 child or children for which the premium is partially or
5 entirely paid by the employer or organization, the judgment
6 or order may contain a provision requiring that coverage for
7 the child or children be continued or obtained.

8 (b) In the event that health insurance required in a
9 child support judgment or order becomes unavailable to the
10 party who is to provide it, through loss or change of
11 employment or otherwise, that party shall, in the absence of
12 an agreement to the contrary, obtain comparable insurance or
13 request that the court modify the requirement.

14 (c) The parties may by written agreement provide for
15 the health care coverage required by this section, subject
16 to the approval of the court.

17 (d) Unless otherwise provided in the decree, the health
18 care coverage required by this section is in addition to and
19 not in substitution, in whole or in part, for the child
20 support obligation.

21 (8) (a) Unless an exception is found under 40-5-315 or
22 40-5-411 and the exception is included in the support order,
23 a support obligation established by judgment, decree, or
24 order under this section, whether temporary or final, and
25 each modification of an existing support obligation made

under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 24. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or

1 adjudicated under this part or under prior law, the court
2 may order support payments to be made to the mother, the
3 clerk of the court, or a person, corporation, or agency
4 designated to administer them for the benefit of the child
5 under the supervision of the court.

6 (2) Willful failure to obey the judgment or order of
7 the court is a civil contempt of the court. All remedies for
8 the enforcement of judgments apply.

9 (3) Child support ordered on behalf of a minor child
10 must be paid to:

11 (a) the legal custodian of the minor child;

12 (b) (i) any other person, organization, or agency
13 having legal physical custody of the minor child or
14 collecting child support on behalf of the minor child under
15 a legal assignment of rights; or

16 (ii) the court for the benefit of the minor child;

17 (c) any other person or agency designated as caretaker
18 of the minor child by agreement of the legal custodian; or

19 (d) any assignee or other person, organization, or
20 agency authorized to receive or collect child support."

21 **Section 25.** Section 53-2-613, MCA, is amended to read:

22 "53-2-613. Application for assistance -- assignment of
23 support rights. (1) Applications for public assistance,
24 including but not limited to aid to families with dependent
25 children and medical assistance, must be made to the county

1 department of public welfare in the county in which the
2 person is residing. The application ~~shall~~ must be submitted,
3 in the manner and form prescribed by the department of
4 social and rehabilitation services, and ~~shall~~ must contain
5 information required by the department of social and
6 rehabilitation services.

7 (2) A person by signing an application for public
8 assistance assigns to the state, the department of social
9 and rehabilitation services, and to the county welfare
10 department all rights the applicant may have to support and
11 medical payments from any other person in his the
12 applicant's own behalf or in behalf of any other family
13 member for whom application is made.

14 (3) The assignment:

15 (a) is effective for both current and accrued support
16 and medical obligations;

17 (b) takes effect upon a determination that the
18 applicant is eligible for public assistance;

19 (c) remains in effect with respect to the amount of any
20 unpaid support and medical obligation accrued under the
21 assignment that was owed prior to the termination of public
22 assistance to a recipient.

23 (4) Whenever a support obligation is assigned to the
24 department of social and rehabilitation services pursuant to
25 this section, the following provisions apply:

(a) If such the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No A recipient or former recipient of public assistance may not commence or maintain an action to recover a delinquent support obligation without notifying the department department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No A recipient or former recipient of public

assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department department's child support enforcement division is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department ~~of-social-and-rehabilitation-services~~, and the county welfare department."

NEW SECTION. Section 26. Child support payments to follow the child. Child support ordered on behalf of a minor child must be paid to:

(1) the legal custodian of the minor child;

(2) (a) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(b) the court for the benefit of the minor child;

(3) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(4) any assignee or other person, organization, or agency authorized to receive or collect child support.

NEW SECTION. Section 27. Lien against real and personal property -- effect of lien -- interest -- warrant for distraint. (1) There is a support lien on the real and

1 personal property of an obligor:

2 (a) when the department has entered a final decision in
3 a contested case under this chapter that finds the obligor
4 owes a sum certain debt either to this department or to an
5 obligee, or both; or

6 (b) upon registration under 40-5-271 of a support order
7 that includes finding that the obligor owes a sum certain
8 amount of delinquent support.

9 (2) A support lien is for the amount required to
10 satisfy:

11 (a) the sum certain debt shown in a final decision in a
12 contested case under this chapter or the sum certain support
13 debt included in any support order registered under
14 40-5-271;

15 (b) interest claimed under this section; and

16 (c) any fees that may be due under 40-5-210.

17 (3) A support lien has the priority of a secured
18 creditor from the date the lien is perfected as provided by
19 this section; however, the lien is subordinate to:

20 (a) any prior perfected lien or security interest;

21 (b) a mortgage, the proceeds of which are used by an
22 obligor to purchase real property; or

23 (c) any perfected purchase money security interest, as
24 defined in 30-9-107.

25 (4) Support liens remain in effect until the

1 delinquency upon which the lien is based is satisfied or
2 until 2 years after the child to whom the support lien is
3 related attains the age of majority, whichever occurs first.

4 (5) The lien applies to all real and personal property
5 owned by the obligor, if it can be located in the state. The
6 lien applies to all real and personal property that the
7 obligor can afterward acquire.

8 (6) The department shall keep a record of support liens
9 asserted under this section in the registry of support
10 orders established by 40-5-271.

11 (a) Except as provided by subsection (7) for motor
12 vehicle liens, a support lien is perfected upon filing the
13 lien with the department's registry.

14 (b) The department shall make information about a
15 support lien available to any interested person or entity
16 AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL
17 ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

18 (c) A support lien filed with the department's registry
19 constitutes constructive notice to a purchaser of real
20 property from an obligor.

21 (d) Except as provided by subsection (7), a lien
22 against an obligor's personal property is not effective
23 against any person, firm, corporation, association,
24 political subdivision, or agency of the state in possession
25 of the obligor's personal property until the department

1 serves a notice of the lien to the person or entity.

2 (E) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR
3 VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD
4 FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE
5 PROPERTY FREE OF THE SUPPORT LIEN.

6 (7) A support lien may be asserted against any motor
7 vehicle, as defined in 61-1-102, as follows:

8 (a) When an obligor is the owner of a motor vehicle,
9 the department may SHALL give notice of the support lien to
10 the department of justice as provided in 61-3-103(6). A
11 notice of support lien filed with the department of justice
12 constitutes constructive notice of the lien to subsequent
13 purchasers or encumbrancers of a motor vehicle from the
14 obligor, commencing from the date the notice is delivered to
15 the department of justice.

16 (b) (i) To assert a support lien on motor vehicles of
17 which an obligor may later acquire ownership, the department
18 may, each month, prepare and submit to the department of
19 justice a list of obligors against whom there is a support
20 lien. The list must identify each obligor by name,
21 last-known address, amount of lien, social security number,
22 if known, and any other identifying information needed by
23 the department of justice to identify the obligor.

24 (ii) The department of justice shall, before issuing a
25 certificate of ownership for any motor vehicle, determine

1 whether the name of the person applying for the certificate
2 is on the most recent monthly support lien list. If the
3 person's name is on the list, the department of justice
4 shall enter a lien on the certificate of ownership under the
5 name of the department as lienholder.

6 (c) The department shall reimburse the department of
7 justice for reasonable costs incurred by the department of
8 justice in implementing this subsection (7).

9 (8) (a) The department may charge interest on the
10 support lien at the rate of 1% per month.

11 (b) Interest accrues at the close of the business day
12 on the last day of each month and is calculated by
13 multiplying the unpaid balance of the lien, including prior
14 accrued interest existing at the end of the day, by the
15 applicable rate of interest.

16 (c) A provision of this section may not be construed to
17 require the department to maintain interest balance due
18 accounts. The department may waive interest if waiver would
19 facilitate the collection of the debt.

20 (d) Interest under this subsection (8) is in addition
21 to and not in substitution for any other interest accrued or
22 accruing under any other provision of law.

23 (9) (a) Upon receiving payment in full of the amount of
24 the lien plus interest and fees, if any, the department
25 shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(10) A support lien under this section is in addition to any other lien created by law.

(11) A support lien under this section may not be discharged in bankruptcy.

(12) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

NEW SECTION. Section 28. Payment of debts to department. If money is due and owing the department, a payment due under Title 40, chapter 5, parts 2 or 4, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment, notwithstanding the department's acceptance of the payment, unless there is additional written agreement, signed by the department, that the payment is payment in full.

NEW SECTION. Section 29. Repealer. Sections 40-5-241, 40-5-245, and 40-5-246, MCA, are repealed.

NEW SECTION. Section 30. Codification instruction. (1) [Sections 26 and 27] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 26 and 27].

(2) [Section 28] is intended to be codified as an integral part of Title 53, chapter 2, part 1, and the provisions of Title 53, chapter 2, part 1, apply to [section 28].

NEW SECTION. Section 31. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 30, 1993 10:18 pm

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: Sue Bartlett
Senator Sue Bartlett

That such amendments read:

1. Title, lines 11 and 12.
Following: "FEES;" on line 11
Strike: remainder of line 11 through "PENALTIES;" on line 12
2. Page 2, line 3.
Strike: "17-7-502,"
3. Page 2, line 21.
Strike: section 1 in its entirety
Renumber: subsequent sections
4. Page 32, lines 7 through 11.
Following: "(8)"
Strike: remainder of line 8 through "17-7-502" on line 11
Insert: "The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected"
5. Page 38, line 23 through page 39, line 1.
Following: "(18)"
Strike: remainder of line 18 through "chapter" on page 39, line 1
Insert: "The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected"
6. Page 45, line 13.
Strike: "27"
Insert: "26"
7. Page 66, lines 2 and 5.
Strike: "26 and 27"
Insert: "25 and 26"
8. Page 66, lines 6 and 9.
Strike: "28"
Insert: "27"

-END-

SENATE

HB 335

r712218CW.Sma

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 8:00 am

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: Thomas E. Towe
Senator Thomas "Tom" Towe

That such amendments read:

1. Page 14, lines 9 and 10.
Strike: "Child" on line 9 through "must" on line 10
Insert: "(a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to"
2. Page 14, line 11.
Strike: "(a)"
Insert: "(i)"
3. Page 14, line 12.
Strike: "(b) (i)"
Insert: "(ii) (A)"
4. Page 14, line 15.
Strike: "(ii)"
Insert: "(B)"
5. Page 14, line 16.
Strike: "(c)"
Insert: "(3)"
6. Page 14, line 18.
Strike: "(d)"
Insert: "(4)"
7. Page 14, line 20.
Following: line 19
Insert: "(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

SENATE

HB 335

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M- Amd. Coord.

VM- Amd. Coord.

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8. Page 57, lines 9 and 10.

Strike: "Child" on line 9 through "must" on line 10

Insert: "(a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to"

9. Page 57, line 11.

Strike: "(a)"

Insert: "(i)"

10. Page 57, line 12.

Strike: "(b) (i)"

Insert: "(ii) (A)"

11. Page 57, line 16.

Strike: "(ii)"

Insert: "(B)"

12. Page 57, line 17.

Strike: "(c)"

Insert: "(3)"

13. Page 57, line 19.

Strike: "(d)"

Insert: "(4)"

14. Page 57, line 21.

Following: line 20

Insert: "(b) A judgment, decree, or order that omits the provision required by subsection (3)(a) is subject to the requirements of subsection (3)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

15. Page 60, lines 11 and 12.

Strike: "Child" on line 11 through "must" on line 12

Insert: "(1) A support order issued or modified under this part must contain a provision requiring the child support to"

16. Page 60, line 13.

Strike: "(1)"

Insert: "(a)"

17. Page 60, line 14.

Strike: "(2) (a)"

Insert: "(b) (i)"

18. Page 60, line 18.

Strike: "(b)"

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Insert: "(ii)"

19. Page 60, line 19.

Strike: "(3)"

Insert: "(c)"

20. Page 60, line 21.

Strike: "(4)"

Insert: "(d)"

21. Page 60, line 23.

Following: line 22

Insert: "(2) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department."

-END-

3

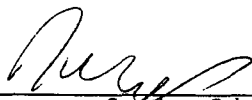
SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 11:15 am

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator John Harp

That such amendments read:

1. Page 23, lines 18 through 21.

Following: "employees"

Strike: "and," on line 18 through "state" on line 21

2. Page 24, lines 7 through 11.

Strike: subsections (h) and (i) in their entirety

Renumber: subsequent subsections

3. Page 24, lines 17 through 24.

Strike: subsecting (3) in its entirety

Renumber: subsequent subsections

4. Page 25, lines 19 through page 26, line 4.

Strike: subsection (6) in its entirety

-END-

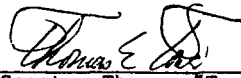
SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 30, 1993 10:28 pm

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator Thomas "Tom" Towe

That such amendments read:

1. Page 5, lines 5 and 6.

Page 5, lines 21 and 22.

Page 6, lines 15 and 16.

Page 6, line 25 through page 7, line 1.

Page 7, line 17.

Following: "child"

Strike: "or spousal"

-END-

SENATE

HB 335

r721115CW.Sma

Amd. Coord.

M- Amd. Coord.

SENATE

HB 335

r712228CW.Sma

1 HOUSE BILL NO. 335

2 INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

3 S. RICE, BOHLINGER, YELLOWTAIL,

4 WATERMAN, L. NELSON, PETERSON

5 BY REQUEST OF THE DEPARTMENT OF

6 SOCIAL AND REHABILITATION SERVICES

7

8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING

9 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND

10 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;

11 PROVIDING FOR ADDITIONAL FEES; ~~STATUTORILY-APPROPRIATING~~

12 ~~FEES-AND-PENALTIES~~; REQUIRING NOTICE TO THE CHILD SUPPORT

13 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND

14 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE

15 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE

16 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;

17 EXTENDING SERVICES TO CHILDREN OVER AGE 18; ~~REQUIRING~~

18 ~~PRIVATE-INDIVIDUALS, ORGANISATIONS, AND BUSINESSES TO--SHARE~~

19 ~~CERTAIN--INFORMATION~~; ALLOWING CHILD SUPPORT PAYMENTS TO

20 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON

21 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE

22 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES

23 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO

24 DISTRIBUTE INCOME-WITHOLDING PAYMENTS BETWEEN MULTIPLE

25 OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF

2 LAW; CONFORMING INCOME-WITHOLDING PERIODS TO OBLIGOR PAY

3 PERIODS; AMENDING SECTIONS ~~17-7-502~~, 25-9-301, 25-9-302,

4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,

5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,

6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,

7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND

8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

9

10 WHEREAS, it is necessary to draft a composite bill

11 containing unrelated sections in order to present the

12 proposed program improvements in a single, comprehensive

13 bill that promotes the needs of legislative energy,

14 efficiency, and economy by limiting the number of possible

15 bills and by reducing the need for hearings and readings on

16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact

18 the following legislation.

19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 ~~Section 1. Section 17-7-502, MCA, is amended to read:--~~

22 ~~*17-7-502. Statutory appropriations-----definition---~~

23 ~~requisites-for-validity. (1) A statutory appropriation is an~~

24 ~~appropriation made by permanent law that authorizes spending~~

25 ~~by a state agency without the need for a biennial~~

legislative appropriation or budget amendment.

{2}--Except--as--provided--in--subsection--{4},--to--be effective, a statutory appropriation must comply with both of the following provisions:

{a}--The--law--containing--the--statutory--authority--must--be listed--in--subsection--{3}.

{b}--The--law--or--portion--of--the--law--making--a--statutory appropriation--must--specifically--state--that--a--statutory appropriation--is--made--as--provided--in--this--section.

{3}--The--following--laws--are--the--only--laws--containing statutory--appropriations:--2-9-202,--2-17-105,--2-18-812, 10-3-203,--10-3-312,--10-3-314,--10-4-301,--13-37-304,--15-1-111, 15-23-706,--15-25-123,--15-31-702,--15-36-112,--15-37-117, 15-65-121,--15-70-101,--16-1-404,--16-1-410,--16-1-411, 17-3-212,--17-5-404,--17-5-424,--17-5-704,--17-5-804,--17-6-409, 17-7-304,--19-5-404,--19-6-709,--19-8-504,--19-9-702,--19-9-1007, 19-10-205,--19-10-305,--19-10-506,--19-11-512,--19-11-513, 19-11-606,--19-12-301,--19-13-604,--19-15-101,--20-4-109, 20-6-406,--20-8-111,--20-9-361,--20-26-1503,--22-3-011, 23-5-136,--23-5-306,--23-5-409,--23-5-610,--23-5-612,--23-5-631, 23-7-301,--23-7-402,--27-12-206,--37-43-204,--37-51-501, 39-71-2504, 40-5-210,--40-5-226, 44-12-206,--44-13-102, 53-6-150,--53-24-206,--61-5-121,--67-3-205,--75-1-1101, 75-5-507,--75-5-1100,--75-11-313,--76-12-123,--77-1-800, 80-2-103,--80-11-310,--82-11-136,--82-11-161,--85-1-220,

90-3-301,--90-4-215,--90-6-331,--90-7-220,--and--90-9-306.

{4}--There--is--a--statutory--appropriation--to--pay--the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. {In subsection {3}, pursuant to sec. 7, Ch. 567, B. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit, and pursuant to sec. 18, Ch. 740, B. 1991, the inclusion of 22-3-011 terminates June 30, 1993.}

Section 1. Section 25-9-301, MCA, is amended to read:

"25-9-301. Docketing of judgment -- lien -- expiration.

(1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him the

judgment debtor at the time or which he the judgment debtor may afterward acquire until the lien ceases. The Except as provided in subsection (3), the lien continues for 6 years unless the judgment be is previously satisfied.

(3) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 2. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county -- lien -- expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such that county, owned by him the judgment debtor at the time or which he the judgment debtor may afterward and before the lien expires acquire. The Except as provided in subsection (2), the lien continues for 6 years unless the judgment be is previously satisfied.

(2) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal court -- lien -- expiration. (1) A transcript of the original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of said court, may be filed with the district court clerk of any county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such the county, owned by him the judgment debtor at the time or which he the judgment debtor may afterward and before the lien expires acquire. The Except as provided in subsection (2), the lien shall---continue continues for 6 years unless the judgment be is previously satisfied.

(2) When the judgment is for the payment of child or spousal support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 4. Section 25-13-101, MCA, is amended to read:

"25-13-101. Time limit for issuing execution. (1) The Except as provided in subsection (2), the party in whose favor the judgment is given may, at any time within 6 years after the entry thereof, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child or

spousal support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation, have a writ of execution issued for its enforcement."

Section 5. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) The Except as provided in subsection (3), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is deemed considered, in such that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child or-spousal support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation."

Section 6. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the

action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. If a support

obligation has been entered, an action must be brought within 10 years of the termination of support obligation."

Section 7. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for ~~his~~ the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and ~~his~~ the child's educational and medical needs;
- (e) the financial resources and needs of the noncustodial parent;
- (f) the age of the child;
- (g) the cost of day care for the child;
- (h) any custody arrangement that is ordered or decided upon; and
- (i) the needs of any person, other than the child, whom

either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

- (a) If either party has available through an employer

1 or other organization health insurance coverage for the
2 child or children for which the premium is partially or
3 entirely paid by the employer or organization, the judgment,
4 decree, or order may contain a provision requiring that
5 coverage for the child or children be continued or obtained.

6 (b) In the event that health insurance required in a
7 child support judgment, decree, or order becomes unavailable
8 to the party who is to provide it, through loss or change of
9 employment or otherwise, that party must, in the absence of
10 an agreement to the contrary, obtain comparable insurance or
11 request that the court modify the requirement.

12 (c) All temporary child support orders must contain a
13 provision requiring the party who has health insurance in
14 effect for the child or children of the parties to continue
15 the insurance coverage pending final disposition of the
16 case.

17 (d) The parties may by written agreement provide for
18 the health care coverage required by this section, subject
19 to the approval of the court.

20 (e) Unless otherwise provided in the decree, the health
21 care coverage required by this section is in addition to and
22 not in substitution, in whole or in part, for the child
23 support obligation.

24 (5) (a) Unless the court makes a written exception
25 under 40-5-315 or 40-5-411 and the exception is included in

1 the support order, a support obligation established by
2 judgment, decree, or order under this section, whether
3 temporary or final, and each modification of an existing
4 support obligation under 40-4-208 must be enforced by
5 immediate or delinquency income withholding, or both, under
6 Title 40, chapter 5, part 3 or 4. A support order that omits
7 the written exceptions provided in 40-5-315 or 40-5-411 or
8 that provides for a payment arrangement inconsistent with
9 this section is nevertheless subject to withholding for the
10 payment of support without need for an amendment to the
11 support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income
13 withholding, the district court judgment or order must
14 include a warning statement that if the obligor is
15 delinquent in the payment of support, the obligor's income
16 may be subject to income withholding procedures under Title
17 40, chapter 5, part 3 or 4. Failure to include a warning
18 statement in a judgment or order does not preclude the use
19 of withholding procedures.

20 (c) After October 1, 1993, if a support order subject
21 to income withholding is expressed in terms of a monthly
22 obligation, the order may be annualized and withheld on a
23 weekly or biweekly basis, corresponding to the obligor's
24 regular pay period.

25 (6) For the purposes of income withholding under

subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order

establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

~~(9) Child-support-ordered-on-behalf-of--a--minor--child~~
must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid to:

~~(a)~~(I) the legal custodian of the minor child;

~~(b)~~--~~(i)~~(II) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

~~(i)~~(B) the court for the benefit of the minor child;

~~(c)~~(III) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

~~(d)~~(IV) any assignee or other person, organization, or agency authorized to receive or collect child support.

(B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE PROVISION REQUIRED BY SUBSECTION (9)(A) IS SUBJECT TO THE

1 REQUIREMENTS OF SUBSECTION (9)(A) WITHOUT NEED FOR AN
 2 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY
 3 FURTHER ACTION BY THE COURT."

4 **Section 8.** Section 40-5-118, MCA, is amended to read:

5 "40-5-118. State information agency. (1) The state
 6 department of social and rehabilitation services is
 7 designated as the state information agency under this part.

8 (2) It shall:

9 (a) compile a list of the courts and their addresses in
 10 this state having jurisdiction under this part and transmit
 11 it to the state information agency of every other state
 12 which that has adopted this or a substantially similar law;
 13 and Upon the adjournment of each session of the legislature
 14 the agency shall distribute copies of any amendments to this
 15 part and a statement of their effective date to all other
 16 state information agencies;

17 (b) maintain a register of lists of courts received
 18 from other states and transmit furnish, upon request, copies
 19 thereof of the list promptly to every court in this state
 20 having jurisdiction under this part; and.

21 (c) forward to the court in this state which has
 22 jurisdiction over the obligor or his property petitions,
 23 certificates, and copies of the reciprocal enforcement of
 24 support act it receives from courts or information agencies
 25 of other states;

1 (3) if the state information agency does not know the
 2 location of the obligor or his property in the state and no
 3 state location service is available, it shall use all means
 4 at its disposal to obtain this information, including the
 5 examination of official records in the state and other
 6 sources such as telephone directories, real property
 7 records, vital statistics records, police records, requests
 8 for the name and address from employers who are able or
 9 willing to cooperate, records of motor vehicle license
 10 offices, requests made to the tax offices both state and
 11 federal where such offices are able to cooperate, and
 12 requests made to the social security administration as
 13 permitted by the Social Security Act, as amended;

14 (4) After the deposit of three copies of the petition
 15 and certificate and one copy of the reciprocal enforcement
 16 of support act of the initiating state with the clerk of the
 17 appropriate court, if the state information agency knows or
 18 believes that the prosecuting attorney is not prosecuting
 19 the case diligently, it shall inform the attorney general
 20 who may undertake the representation."

21 **Section 9.** Section 40-5-201, MCA, is amended to read:

22 "40-5-201. Definitions. As used in this part, the
 23 following definitions apply:

24 (1) "Alleged father" means a man who is alleged to have
 25 engaged in sexual intercourse with a child's mother during a

possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of

social and rehabilitation services or his the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include

but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 10. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure--that--the--parent--or---other---person responsible--pays-for-the-care,-support,-or-maintenance-of-a child provide IV-D services if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) If---the--department--is--providing--child--support

1 ~~enforcement-services--for--a--child--under--this--part--the~~
 2 ~~department--becomes--trustee--of--any-cause-of-action-of-the~~
 3 ~~child-or-the-obligee-to-recover-support-due-to-the-child--or~~
 4 ~~obligee--from--the--obligor--The--department--may-bring-and~~
 5 ~~maintain-the-action-in-its-own-name-or-in-the--name--of--the~~
 6 ~~obligee. A verified statement, filed by the department, that~~
 7 ~~it is providing services is prima facie evidence of its~~
 8 ~~authority to act. The department may initiate, participate~~
 9 ~~in, or exercise any remedy available in a judicial or an~~
 10 ~~administrative action on the same basis as any other party.~~

11 (3) The department has the power of attorney to act in
 12 the name of any obligee to endorse and cash any and all
 13 drafts, checks, money orders, or other negotiable
 14 instruments received by the department on behalf of a child.

15 (4) ~~For--purposes--of-prosecuting-any-civil-action--the~~
 16 ~~department-is-a-real-party-in-interest-if--it--is--providing~~
 17 ~~child--support--enforcement--services--under--this-part. The~~
 18 ~~department is a party to and must be afforded notice and an~~
 19 ~~opportunity to participate in any proceeding relating to~~
 20 ~~paternity or to the establishment, enforcement, or~~
 21 ~~modification of a support obligation, whether initiated by~~
 22 ~~the obligee, the obligor, or the child. No--obligee A~~
 23 ~~recipient of services may not act to prejudice the rights of~~
 24 the department while such the services are being provided.

25 (5) If child support enforcement services are being or

1 have been provided under this part, no an agreement between
 2 any obligee and any obligor either relieving an obligor of
 3 any duty of support or purporting to settle past, present,
 4 or future support obligations either as settlement or
 5 prepayment may not act to reduce or terminate any rights of
 6 the department to recover from the obligor for support debt
 7 provided unless the department has consented to the
 8 agreement in writing.

9 (6) The department may petition a court or an
 10 administrative agency for modification of any order on the
 11 same basis as a party to that action is entitled to do.

12 (7) The department is subrogated to the right of the
 13 child or obligee to maintain any civil action or execute any
 14 administrative remedy available under the laws of this or
 15 any other state to collect a support debt. This right of
 16 subrogation is in addition to and independent of the
 17 assignment under 53-2-613 and the support debt created by
 18 40-5-221.

19 (8) If public assistance is being or has been paid, the
 20 department is subrogated to the debt created by a support
 21 order and any money judgment is considered to be in favor of
 22 the department. This subrogation is an addition to any
 23 assignment made under 53-2-613 and applies to the lesser of:

- 24 (a) the amount of public assistance paid; or
 25 (b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) When a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning the establishment or enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division."

Section 11. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any

statute making the information confidential, all state, county, and city agencies, officers, and employees and, EXCEPT AS PROVIDED IN SUBSECTION (6), all corporations, partnerships, associations, organizations, or individuals doing business in the state must provide on request any information, if known, concerning the location, income, and assets of an obligor, including:

(a) name;

(b) address of obligor's residence;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) name and address of any financial institution maintaining an account for the obligor;

(i) account number, account balances, account type, and the name under which the obligor has an interest in an account or deposit with a financial institution;

(j) address of any real property owned by the obligor; and

(k) any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.

1 ~~{3}--Except-as-provided-in-40-5-261--and--rules--adopted~~
 2 ~~under--40-5-262,--any--records--established--pursuant-to-the~~
 3 ~~provisions--of--this--section--are--available--only--to--the~~
 4 ~~department; A-person--who--knowingly--fails--or--refuses--to~~
 5 ~~provide--information--or--who--knowingly--provides--false--or~~
 6 ~~incorrect--information--concerning--an--obligor,--in--response--to~~
 7 ~~a--request--by--the--department,--is--subject--to--citation--for~~
 8 ~~contempt-under-the-provisions-of-this-part;~~

9 ~~{4}{3} Any information obtained by the department~~
 10 ~~during the course of a child support investigation that is~~
 11 ~~confidential at the source must be treated by the department~~
 12 ~~as confidential and must be safeguarded accordingly.~~

13 ~~{5}{4} Use or disclosure of information obtained by the~~
 14 ~~department from confidential sources of and information~~
 15 ~~maintained by the department in its records, including the~~
 16 ~~names, addresses, and social security numbers of obligors~~
 17 ~~and obligees, is limited to:~~

18 ~~(a) purposes directly related to the provision of~~
 19 ~~services under this chapter;~~

20 ~~(b) county attorneys, and courts having jurisdiction in~~
 21 ~~support and abandonment proceedings or actions or agencies~~
 22 ~~in other states engaged in the enforcement of support of~~
 23 ~~minor children as authorized by the rules of the department~~
 24 ~~and by the provisions of the federal Social Security Act;~~
 25 ~~and~~

1 ~~(c) any other use permitted or required by the federal~~
 2 ~~Social Security Act.~~

3 ~~{6}--IF-A-FINANCIAL-INSTITUTION-DEFINED-IN-31-1-111-AS-A~~
 4 ~~REGULATED--LENDER--POSSESSES--INFORMATION--DESCRIBED--IN~~
 5 ~~SUBSECTION--(2){i},--(2){j},--OR--(2){k}--THAT--RELATES-TO-A~~
 6 ~~PERSON-WHO-IS-THE-SUBJECT-OF-AN-INQUIRY-BY--THE--DEPARTMENT,~~
 7 ~~THE-FINANCIAL-INSTITUTION-NEED-ONLY-TELL-THE-DEPARTMENT-THAT~~
 8 ~~IT--POSSESSES--INFORMATION--THE--DEPARTMENT--SEEKS,--THE~~
 9 ~~DEPARTMENT-MAY-APPLY-FOR-AN--INVESTIGATIVE--SUBPOENA--UNDER~~
 10 ~~46-4-301,--STATING--IN-THE-PROSECUTOR'S-AFFIDAVIT-IN-SUPPORT~~
 11 ~~OF-THE-SUBPOENA-THAT-ASSETS-OR-RESOURCES-OF-THE--OBLIGOR--DO~~
 12 ~~OR-MAY-EXIST-AND-THAT-THE-ADMINISTRATION-OF-JUSTICE-REQUIRES~~
 13 ~~THE-FINANCIAL-INSTITUTION-TO-DISCLOSE-THE-INFORMATION."~~

14 **Section 12.** Section 40-5-208, MCA, is amended to read:

15 ~~"40-5-208. Medical support -- obligation enforcement --~~
 16 ~~sanctions. (1) (a) In any proceeding initiated pursuant to~~
 17 ~~this part to establish a child support order, whether final~~
 18 ~~or temporary, and in each modification of an existing order,~~
 19 ~~the department shall require the obligor to obtain and~~
 20 ~~maintain health insurance coverage for each child if health~~
 21 ~~insurance coverage is available through the obligor's~~
 22 ~~employment or other group health insurance plan. The order~~
 23 ~~or modification of an order must include a statement that~~
 24 ~~the insurance must be obtained and maintained whenever the~~
 25 ~~department is providing support enforcement services and~~

1 that the failure to do so may result in the imposition of
2 sanctions under this section.

3 (b) If the support order or modification of an order
4 does not include a provision requiring the obligor to
5 provide health insurance coverage for a child, upon notice
6 to the obligor that the child is receiving support
7 enforcement services under Title IV-D of the Social Security
8 Act, the obligor shall obtain and maintain health insurance
9 coverage as provided for in subsection (1)(a). This
10 insurance is in addition to:

11 (i) an order requiring the obligee to maintain health
12 insurance coverage;

13 (ii) an agreement that the obligee will maintain health
14 insurance coverage; or

15 (iii) a failure or omission of the court order or
16 modification of an order to require health insurance
17 coverage.

18 (2) (a) If the department is providing child support
19 enforcement services and the obligor is required by an
20 existing district court order or an administrative order
21 under this section to provide health insurance coverage for
22 a child, the department shall also enforce the health
23 insurance obligation.

24 (b) To ensure that health insurance coverage is
25 available for the child, the obligor, upon written request

1 by the department, shall provide the name of the insurance
2 carrier, the policy identification name and number, the
3 names of the persons covered, and any other pertinent
4 information regarding coverage.

5 (3) (a) The department may issue a notice commanding
6 the obligor to appear at a hearing held by the department
7 and show cause why a sum of not more than \$100 should not be
8 assessed for each month health insurance coverage is not
9 secured or maintained if the department determines an
10 obligor has failed to:

11 (i) obtain or maintain health insurance coverage as
12 required under this section; or

13 (ii) provide information required under this section.

14 (b) If the department finds, after hearing or the
15 obligor's failure to appear, that health insurance coverage
16 has not been obtained or maintained or that the obligor has
17 failed to provide the information required, the department
18 may assess against the obligor not more than \$100 for each
19 month health insurance coverage has not been obtained or
20 maintained or for each month information has not been
21 provided. Such The amounts may be enforced by any
22 administrative remedy available to the department for the
23 enforcement of child support obligations, including warrant
24 for distraint provided for in ~~40-5-241~~ 40-5-247 and income
25 withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 13. Section 40-5-210, MCA, is amended to read:

"40-5-210. Standardized fee schedule -- rules. (1) The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) The department may charge a handling fee for each

payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(3) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee who is not a recipient of public assistance.

(4) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) (2) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order in which whenever the department:

(i) is the prevailing party in the action; or

1 (ii) is not a party but incurs expenses and costs
2 related to the action.

3 ~~(3)--Fees awarded under this section are in the nature~~
4 ~~of child support and are collectible in the same manner as a~~
5 ~~support order. The fee award may be collected separately or~~
6 ~~added to and collected with any balance due on a support~~
7 ~~debt.~~

8 ~~(4)--Collection of a fee award may not reduce any~~
9 ~~current child support payment due the obligee.~~

10 ~~(5)--Arrearage amounts collected that include a fee must~~
11 ~~be allocated as follows:~~

12 ~~(a)--If the obligee is a recipient of public assistance,~~
13 ~~the amount must be allocated first to satisfy the fee.~~

14 ~~(b)--If the obligee is not a recipient of public~~
15 ~~assistance, the first 10% of each amount collected must be~~
16 ~~allocated to satisfy the fee.~~

17 (5) The department may collect the fees awarded under
18 this section by one of the following means:

19 (a) if the fee is owed by an obligor, the fee may be:

20 (i) collected through any remedy available to the
21 department for the collection of child support arrearages;
22 or

23 (ii) deducted from any payments made by the obligor
24 before the payment is distributed to the obligee. Credit for
25 the payment must be reduced by the amount of the deduction

1 for the fee. The deduction for fees may not reduce any
2 current support due to the obligee. The deduction for a late
3 payment fee may not reduce any current or past-due support
4 due to the obligee.

5 (b) if the fee is owed by the obligee, the fee may be
6 collected separately through any remedy available to the
7 department for the collection of child support or the
8 department may withhold the fee amount out of any payment
9 collected on behalf of the obligee. The obligor must receive
10 full credit for the payment as if the withholding of fees
11 did not occur.

12 (6) The department, upon a showing of necessity, may
13 waive or defer any fee assessed under this section.

14 (7) The department may adopt rules necessary to
15 implement fee schedules under this section.

16 ~~(8) The department may retain any fees collected under~~
17 ~~this section to help offset administrative costs and~~
18 ~~expenses of operating the child support enforcement program.~~
19 ~~For this purpose, the fees are statutorily appropriated as~~
20 ~~provided in 17-7-502 THE FEES AND COSTS CHARGED AND~~
21 ~~COLLECTED UNDER THIS SECTION MUST BE PAID MONTHLY INTO THE~~
22 ~~STATE TREASURY TO THE CREDIT OF THE CHILD SUPPORT~~
23 ~~ENFORCEMENT DIVISION SPECIAL REVENUE FUND AND MUST BE~~
24 ~~ACCOMPANIED BY A DETAILED STATEMENT OF THE AMOUNTS~~
25 ~~COLLECTED."~~

Section 14. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance -- warrant for distraint -- bond to release warrant -- action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~ or left, or has removed or is about to remove, secrete, waste, or otherwise dispose of property which that could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the fair hearing or ~~thereafter~~ after the hearing, whether or not appealed. ~~No-further~~ Further action may not be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or ~~thereafter~~ after the hearing, and in such that case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the

date of issuance of the decision resulting from the hearing."

Section 15. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such the determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in

1 accordance with the evidence presented and with reference to
2 the scale of suggested minimum contributions under 40-5-214.
3 The hearing officer is not limited to the amounts stated in
4 the notice.

5 (7) Within 20 days of the hearing, the hearing officer
6 shall enter a final decision and order. The determination of
7 the hearing officer constitutes a final agency decision,
8 subject to judicial review under 40-5-253 and the provisions
9 of the Montana Administrative Procedure Act.

10 (8) A support order entered under this part must
11 contain a statement that the order is subject to review and
12 modification by the department upon the request of the
13 department or a party under 40-5-271 through 40-5-273 when
14 the department is providing services under IV-D for the
15 enforcement of the order.

16 (9) A support debt determined pursuant to this section
17 is subject to collection action without further necessity of
18 action by the hearing officer.

19 (10) A support debt or a support responsibility
20 determined under this part by reason of the obligor's
21 failure to request a hearing under this part or failure to
22 appear at a scheduled hearing may be vacated, upon the
23 motion of an obligor, by the hearing officer within the time
24 provided and upon a showing of any of the grounds enumerated
25 in the Montana Rules of Civil Procedure.

1 (11) Unless the hearing officer makes a written
2 exception under 40-5-315 or 40-5-411 and the exception is
3 included in the support order, every order establishing a
4 child support obligation, whether temporary or final, and
5 each modification of an existing child support order under
6 this part is enforceable by immediate or delinquency income
7 withholding, or both, under Title 40, chapter 5, part 4. A
8 support order that omits that provision or that provides for
9 a payment arrangement inconsistent with this section is
10 nevertheless subject to withholding for the payment of
11 support without need for an amendment of the support order
12 or for any further action by the hearing officer.

13 (12) For the purposes of income withholding provided for
14 in subsection (11), whenever the department establishes or
15 modifies a child support obligation, the department's order
16 must include a provision requiring the obligor, for as long
17 as the department is providing support enforcement services,
18 to keep the department informed of the name and address of
19 the obligor's current employer, whether the obligor has
20 access to health insurance through an employer or other
21 group, and, if so, the health insurance policy information.

22 (13) The hearing officer may:

23 (a) compel obedience to the hearing officer's orders,
24 judgments, and process and to any orders issued by the
25 department, including income-withholding orders issued

1 pursuant to 40-5-415;

2 (b) compel the attendance of witnesses at
3 administrative hearings;

4 (c) compel obedience of subpoenas for paternity blood
5 tests;

6 (d) compel the production of accounts, books,
7 documents, and other evidence; and

8 (e) punish for civil contempt. Contempt authority does
9 not prevent the department from proceeding in accordance
10 with the provisions of 2-4-104.

11 (14) A contempt occurs whenever:

12 (a) a person acts in disobedience of any lawful order,
13 judgment, or process of the hearing officer or of the
14 department;

15 (b) a person compelled by subpoena to appear and
16 testify at an administrative hearing or to appear for
17 genetic paternity tests fails to do so;

18 (c) a person compelled by subpoena duces tecum to
19 produce evidence at an administrative hearing fails to do
20 so;

21 (d) an obligor or obligee subject to a discovery order
22 issued by the hearing officer fails to comply with discovery
23 requests; or

24 (e) a payor under an order to withhold issued pursuant
25 to 40-5-415 fails to comply with the provisions of the

1 order. In the case of a payor under an income-withholding
2 order, a separate contempt occurs each time income is
3 required to be withheld and paid to the department and the
4 payor fails to take the required action.

5 (15) An affidavit of the facts constituting a contempt
6 must be submitted to the hearing officer, who shall review
7 it to determine whether there is cause to believe that a
8 contempt has been committed. If cause is found, the hearing
9 officer shall issue a citation requiring the alleged
10 contemnor to appear and show cause why the alleged contemnor
11 should not be determined to be in contempt and required to
12 pay a penalty of not more than \$500 for each count of
13 contempt. The citation, along with a copy of the affidavit,
14 must be served upon the alleged contemnor either by personal
15 service or by certified mail. All other interested persons
16 may be served a copy of the citation by first-class mail.

17 (16) At the time and date set for hearing, the hearing
18 officer shall proceed to hear witnesses and take evidence
19 regarding the alleged contempt and any defenses to the
20 contempt. If the alleged contemnor fails to appear for the
21 hearing, the hearing may proceed in the alleged contemnor's
22 absence. If the hearing officer finds the alleged contemnor
23 in contempt, the hearing officer may impose a penalty of not
24 more than \$500 for each count found. The hearing officer's
25 decision constitutes a final agency decision, subject to

1 judicial review under 40-5-253 and subject to the provisions
 2 of Title 2, chapter 4.

3 (17) An amount imposed as a penalty may be collected by
 4 any remedy available to the department for the enforcement
 5 of child support obligations, including warrant for
 6 distrainment pursuant to 40-5-247, income withholding pursuant
 7 to Title 40, chapter 5, part 4, and state debt offset,
 8 pursuant to Title 17, chapter 4, part 1. The department may
 9 retain any penalties collected under this section to offset
 10 the costs of administrative hearings conducted under this
 11 chapter.

12 (18) ~~The money collected as a penalty under this section~~
 13 ~~is statutorily appropriated, as provided in 17-7-502, to the~~
 14 ~~department to help offset expenditures for administrative~~
 15 ~~hearings conducted under this chapter~~ THE PENALTIES CHARGED
 16 AND COLLECTED UNDER THIS SECTION MUST BE PAID INTO THE STATE
 17 TREASURY TO THE CREDIT OF THE CHILD SUPPORT ENFORCEMENT
 18 DIVISION SPECIAL REVENUE FUND AND MUST BE ACCOMPANIED BY A
 19 DETAILED STATEMENT OF THE AMOUNTS COLLECTED."

20 **Section 16.** Section 40-5-227, MCA, is amended to read:

21 "40-5-227. Filing and docketing of final orders --
 22 orders effective as district court decrees. (1) An abstract
 23 of any final administrative order under this chapter may be
 24 filed in the office of the clerk of the district court of
 25 any county of Montana. The order, if approved, must be

1 docketed in the judgment docket of the district court. The
 2 properly filed and docketed order has all the force, effect,
 3 and attributes of a docketed order or decree of the district
 4 court, including but not limited to lien effect and
 5 enforceability by supplemental proceedings, writs of
 6 execution, and contempt of court proceedings.

7 (2) A final administrative order that determines and
 8 sets periodic support payments in the absence of a district
 9 court order, when filed and docketed under this section, may
 10 be modified by a district court order only as to
 11 installments accruing after actual notice to the parties of
 12 any motion for modification. The standard for any such a
 13 modification is that set forth in 40-4-208.

14 (3) The department may issue a warrant for distrainment
 15 based upon a properly filed and docketed order pursuant to
 16 ~~40-5-241~~ 40-5-247."

17 **Section 17.** Section 40-5-232, MCA, is amended to read:

18 "40-5-232. Establishment of paternity -- notice of
 19 paternity determination -- contents. (1) When the paternity
 20 of a child has not been legally established under the
 21 provisions of Title 40, chapter 6, part 1, or otherwise, the
 22 department may proceed to establish paternity under the
 23 provisions of 40-5-231 through 40-5-237. An administrative
 24 hearing held under the provisions of 40-5-231 through
 25 40-5-237 is a contested case within the meaning of 2-4-102

1 and is subject to the provisions of Title 2, chapter 4,
2 except as otherwise provided in 40-5-231 through 40-5-237.

3 (2) It is presumed to be in the best interest of a
4 child to legally determine and establish his paternity. A
5 presumption under this subsection may be rebutted by a
6 preponderance of the evidence.

7 (3) In any proceeding under 40-5-231 through 40-5-237,
8 if a man acknowledges his paternity of a child in writing
9 and such the acknowledgment is filed with the department,
10 the department may enter an order establishing legal
11 paternity. An acknowledgment is binding on a parent who
12 executes it, whether or not he the parent is a minor.

13 (4) The department shall commence proceedings to
14 establish paternity by serving on an alleged father a notice
15 of paternity determination. The department may not serve
16 such the notice unless it has:

17 (a) a sworn statement from the child's mother claiming
18 that the alleged father is the child's natural father;

19 (b) evidence of the existence of a presumption of
20 paternity under 40-6-105; or

21 (c) any other reasonable cause to believe that the
22 alleged father is the child's natural father.

23 (5) Service on the alleged father of the notice of
24 paternity determination ~~shall~~ must be made as provided in
25 40-5-231(2). The notice must include:

1 (a) an allegation that the alleged father is the
2 natural father of the child involved;

3 (b) the child's name and place and date of birth;

4 (c) the name of the child's mother and the name of the
5 person or agency having custody of the child, if other than
6 the mother;

7 (d) the probable time or period of time during which
8 conception took place;

9 (e) a statement that if the alleged father fails to
10 timely deny the allegation of paternity, the question of
11 paternity may be resolved against him the alleged father
12 without further notice;

13 (f) a statement that if the alleged father timely
14 denies the allegation of paternity:

15 (i) he the alleged father is subject to compulsory
16 blood testing;

17 (ii) a blood test may result in a presumption of
18 paternity; and

19 (iii) ~~he may request a trial in district court to~~
20 ~~determine paternity before the final administrative decision~~
21 ~~is made upon receipt of the blood test results, if the~~
22 ~~alleged father continues to deny paternity, the alleged~~
23 ~~father may request the department to refer the matter to~~
24 ~~district court for a determination of paternity.~~

25 (6) The alleged father may file a written denial of

1 paternity with the department within 20 days after service
2 of the notice of paternity determination.

3 (7) When there is more than one alleged father of a
4 child, the department may serve a notice of paternity
5 determination on each alleged father in the same
6 consolidated proceeding or in separate proceedings. Failure
7 to serve notice on an alleged father does not prevent the
8 department from serving notice on any other alleged father
9 of the same child."

10 **Section 18.** Section 40-5-242, MCA, is amended to read:

11 "40-5-242. Civil Notice of support lien -- civil
12 liability upon failure to honor support lien or to comply
13 with warrant or-to-honor-assignment-of-wages for distraint.
14 (1) The department may, at any time after asserting a
15 support lien, serve a notice of the lien on any person,
16 firm, corporation, association, or political subdivision or
17 department of the state in possession of any real or
18 personal property that is due, owing, or belonging to an
19 obligor. For this purpose, personal property includes the
20 obligor's share of a decedent's estate, workers'
21 compensation benefits, and any proceeds or potential
22 proceeds from suits at law.

23 (2) Except as provided in subsection (3), A a person;
24 firm, corporation, association, political subdivision, or
25 department of the state or entity is liable to the

1 department in an amount equal to 100% of the value of the a
2 support debt--that--is--the--basis--of--the--distrain--or
3 assignment-of-wages lien or warrant for distraint or the
4 value of the-distrained real or personal property subject to
5 a support lien or distrained by a warrant for distraint,
6 whichever is less, together with costs, interest, and
7 reasonable attorney fees, if the person or entity:

8 (1)--fails-or-refuses-to-deliver--property--pursuant--to
9 the-order;

10 (2)(a) pays over, releases, sells, transfers, or
11 conveys real or personal property subject to a support lien,
12 to or for the benefit of the obligor, after the person or
13 entity receives actual notice of filing of the support lien;
14 or

15 (3)(b) fails or refuses to surrender upon demand
16 property distrained--under--40-5-241 of an obligor when
17 presented with a warrant for distraint by a sheriff or
18 levying officer under the provisions of 40-5-247; or.

19 (4)--fails--or--refuses--to-honor-an-assignment-of-wages
20 presented-by-the-department;

21 (3) A person or entity is not liable to the department
22 under this section when:

23 (a) a written release or waiver of the support lien or
24 warrant for distraint issued by the department has been
25 delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as defined by 30-9-107."

Section 19. Section 40-5-247, MCA, is amended to read:

"40-5-247. Filing-warrant-with-district-court---effect of-filing---release Warrant for distraint -- effect -- satisfaction of support lien -- redemption. {1}--After issuing--a-warrant, the-department-may-file-the-warrant-with the-clerk-of-a-district-court,--The--clerk--shall--file--the warrant--in--the--judgment--docket,--with--the--name--of--the delinquent-obligor-listed-as-the-judgment-debtor.

{2}--Upon-filing-the-warrant, there-is--a--lien--against all--real--and--personal--property-of-the-delinquent-obligor located-in-the--county--where--the--warrant--is--filed,--The resulting--lien--is-treated-in-the-same-manner-as-a-property docketed-judgment--lien,--and--the--department--may--collect

~~delinquent--child--support--and-enforce-the-lien-in-the-same manner-as-a-judgment-is-enforced,--The-lien-is-for-the-amount indicated-on-the-warrant-plus-accrued-interest-from-the-date of-the-warrant.~~

(1) The department may issue a warrant for distraint to execute support liens established by [section 20 27 26] or to enforce and collect any money obligation authorized under this chapter.

(a) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based.

(b) A warrant must be signed by the director of the department or the director's designee.

(c) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(d) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

{3}{2} (a) A copy--of--the-filed warrant for distraint may be sent by the department to the sheriff or authorized

1 agent levying officer. Upon receipt of ~~a copy of~~ the filed
2 warrant, the sheriff or ~~authorized--agent~~ levying officer
3 shall proceed to execute upon the warrant in the same manner
4 as prescribed for execution upon a judgment.

5 (b) A sheriff or agent levying officer shall return a
6 warrant, along with any funds collected, within 90 days of
7 the receipt of the ~~copy of the~~ warrant.

8 (c) Funds resulting from execution upon the warrant
9 must first be applied to the sheriff's or levying officer's
10 costs, any superior liens, the support lien, or other money
11 obligation and to any inferior liens. Any amounts in excess
12 of this distribution must be paid to the obligor.

13 ~~(c)(d)~~ If the warrant is returned not fully satisfied,
14 the department has the same remedies to collect the
15 deficiency as are available for any civil judgment.

16 (3) A sheriff's or levying officer's levy against real
17 and personal property of the obligor is not limited to
18 property in possession of persons or other entities given
19 notice of a support lien under 40-5-242.

20 (4) (a) Upon receiving payment in full of the unpaid
21 ~~child--support~~ warrant amount plus penalty and fees, if any,
22 and accumulated interest, the department shall release the
23 ~~lien~~ warrant.

24 (b) Upon receiving partial payment of the unpaid ~~child~~
25 support warrant amount or if the department determines that

1 a release or partial release of the ~~lien~~ warrant will
2 facilitate the collection of the unpaid amount, penalty, and
3 interest, the department may release or may partially
4 release the ~~lien--acquired--by--filing--the~~ warrant for
5 distraint. The department may release the ~~lien~~ warrant if it
6 determines that the ~~lien~~ warrant is unenforceable.

7 (5) An obligor or other person or entity having an
8 interest in real or personal property levied upon by a
9 warrant for distraint at any time prior to sale of the
10 property may pay the amount of the support lien or other
11 money obligation and any costs incurred by the sheriff or
12 levying officer serving the warrant. Upon payment in full,
13 the property must be restored to the obligor or other person
14 and all proceedings on the warrant must cease.

15 (6) An obligor or other person or entity having an
16 interest in real property levied upon and sold by a sheriff
17 or levying officer pursuant to a warrant for distraint may,
18 within 240 days after sale of the property, redeem the
19 property by making payment to the purchaser in the amount
20 paid by the purchaser plus interest at the statutory
21 interest rate payable on judgments recovered in the district
22 court.

23 (7) At any time after distraint of property under a
24 warrant for distraint, the department may release all or
25 part of the seized property without liability if payment of

the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 20. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 6-years-from-the-date-a-support debt-was-incurred 10 years from the date of termination of the support obligation, the department may charge off as

uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. ~~No--proceedings~~ A proceeding or action under the provisions of this part may not be begun after expiration of the 6-year 10-year period to institute collection of a support debt. ~~Nothing-herein~~ This part may not be construed to render invalid or nonactionable a warrant for distraint ~~filed-with--the--clerk of-court~~ issued by the department prior to the expiration of the 6-year 10-year period or an assignment of earnings executed prior to the expiration of the 6-year 10-year period."

Section 21. Section 40-5-415, MCA, is amended to read:

"40-5-415. Order to withhold income -- rules. (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until

further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules."

Section 22. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at

variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily ~~shall~~ must be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court ~~deems~~ considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this

section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may, by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent,

without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 23. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for

the enforcement of judgments apply.

(3) Child-support-ordered-on-behalf-of--a--minor--child must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid to:

(a)(I) the legal custodian of the minor child;

(b)--(i)(II) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(ii)(B) the court for the benefit of the minor child;

(c)(III) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d)(IV) any assignee or other person, organization, or agency authorized to receive or collect child support.

(B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE PROVISION REQUIRED BY SUBSECTION (3)(A) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION (3)(A) WITHOUT NEED FOR AN AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY FURTHER ACTION BY THE COURT."

Section 24. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance,

including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application ~~shall~~ must be submitted, in the manner and form prescribed by the department of social and rehabilitation services, and ~~shall~~ must contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the

department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If such the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No A recipient or former recipient of public assistance may not commence or maintain an action to recover a delinquent support obligation without notifying the department department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are

1 satisfied or released.

2 (d) No A recipient or former recipient of public
3 assistance may not take action to modify or make any
4 agreement to modify, settle, or release any past, present,
5 or future support obligation unless the department
6 department's child support enforcement division is given
7 written notice and an opportunity to participate. Any
8 modifications or agreements entered into without the
9 participation of the department are void with respect to the
10 state, the department of ~~social-and-rehabilitation-services~~,
11 and the county welfare department."

12 NEW SECTION. Section 25. Child support payments to
13 follow the child. Child-support-ordered-on-behalf-of-a-minor
14 child-must (1) A SUPPORT ORDER ISSUED OR MODIFIED UNDER THIS
15 PART MUST CONTAIN A PROVISION REQUIRING THE CHILD SUPPORT TO
16 be paid to:

17 (1)(A) the legal custodian of the minor child;

18 (2)--(a)(B) (I) any other person, organization, or
19 agency having legal physical custody of the minor child or
20 collecting child support on behalf of the minor child under
21 a legal assignment of rights; or

22 (b)(II) the court for the benefit of the minor child;

23 (3)(C) any other person or agency designated as
24 caretaker of the minor child by agreement of the legal
25 custodian; or

1 (4)(D) any assignee or other person, organization, or
2 agency authorized to receive or collect child support.

3 (2) AN ORDER THAT OMITTS THE PROVISION REQUIRED BY
4 SUBSECTION (1) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION
5 (1) WITHOUT NEED FOR AN AMENDMENT TO THE ORDER OR FOR ANY
6 FURTHER ACTION BY THE DEPARTMENT.

7 NEW SECTION. Section 26. Lien against real and
8 personal property -- effect of lien -- interest -- warrant
9 for distraint. (1) There is a support lien on the real and
10 personal property of an obligor:

11 (a) when the department has entered a final decision in
12 a contested case under this chapter that finds the obligor
13 owes a sum certain debt either to this department or to an
14 obligee, or both; or

15 (b) upon registration under 40-5-271 of a support order
16 that includes finding that the obligor owes a sum certain
17 amount of delinquent support.

18 (2) A support lien is for the amount required to
19 satisfy:

20 (a) the sum certain debt shown in a final decision in a
21 contested case under this chapter or the sum certain support
22 debt included in any support order registered under
23 40-5-271;

24 (b) interest claimed under this section; and

25 (c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

- (a) any prior perfected lien or security interest;
- (b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or
- (c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(a) Except as provided by subsection (7) for motor vehicle liens, a support lien is perfected upon filing the lien with the department's registry.

(b) The department shall make information about a support lien available to any interested person or entity

AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL

ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

(c) A support lien filed with the department's registry constitutes constructive notice to a purchaser of real property from an obligor.

(d) Except as provided by subsection (7), a lien against an obligor's personal property is not effective against any person, firm, corporation, association, political subdivision, or agency of the state in possession of the obligor's personal property until the department serves a notice of the lien to the person or entity.

(E) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT LIEN.

(7) A support lien may be asserted against any motor vehicle, as defined in 61-1-102, as follows:

(a) When an obligor is the owner of a motor vehicle, the department may SHALL give notice of the support lien to the department of justice as provided in 61-3-103(6). A notice of support lien filed with the department of justice constitutes constructive notice of the lien to subsequent purchasers or encumbrancers of a motor vehicle from the obligor, commencing from the date the notice is delivered to the department of justice.

(b) (i) To assert a support lien on motor vehicles of

1 which an obligor may later acquire ownership, the department
 2 may, each month, prepare and submit to the department of
 3 justice a list of obligors against whom there is a support
 4 lien. The list must identify each obligor by name,
 5 last-known address, amount of lien, social security number,
 6 if known, and any other identifying information needed by
 7 the department of justice to identify the obligor.

8 (ii) The department of justice shall, before issuing a
 9 certificate of ownership for any motor vehicle, determine
 10 whether the name of the person applying for the certificate
 11 is on the most recent monthly support lien list. If the
 12 person's name is on the list, the department of justice
 13 shall enter a lien on the certificate of ownership under the
 14 name of the department as lienholder.

15 (c) The department shall reimburse the department of
 16 justice for reasonable costs incurred by the department of
 17 justice in implementing this subsection (7).

18 (8) (a) The department may charge interest on the
 19 support lien at the rate of 1% per month.

20 (b) Interest accrues at the close of the business day
 21 on the last day of each month and is calculated by
 22 multiplying the unpaid balance of the lien, including prior
 23 accrued interest existing at the end of the day, by the
 24 applicable rate of interest.

25 (c) A provision of this section may not be construed to

1 require the department to maintain interest balance due
 2 accounts. The department may waive interest if waiver would
 3 facilitate the collection of the debt.

4 (d) Interest under this subsection (8) is in addition
 5 to and not in substitution for any other interest accrued or
 6 accruing under any other provision of law.

7 (9) (a) Upon receiving payment in full of the amount of
 8 the lien plus interest and fees, if any, the department
 9 shall take all necessary steps to release the support lien.

10 (b) Upon receiving partial payment of the support lien
 11 or if the department determines that a release or partial
 12 release of the lien will facilitate the collection of
 13 support arrearages, the department may release or partially
 14 release the support lien. The department may release the
 15 support lien if it determines that the lien is
 16 unenforceable.

17 (10) A support lien under this section is in addition to
 18 any other lien created by law.

19 (11) A support lien under this section may not be
 20 discharged in bankruptcy.

21 (12) Support liens provided for by this section may be
 22 enforced or collected through the warrant for distraint
 23 provided for by 40-5-247.

24 NEW SECTION. **Section 27.** Payment of debts to
 25 department. If money is due and owing the department, a

1 payment due under Title 40, chapter 5, parts 2 or 4, or
2 under this chapter that is accompanied by or bears any
3 notation by the debtor that the payment represents payment
4 in full is not full payment, notwithstanding the
5 department's acceptance of the payment, unless there is
6 additional written agreement, signed by the department, that
7 the payment is payment in full.

8 NEW SECTION. Section 28. Repealer. Sections 40-5-241,
9 40-5-245, and 40-5-246, MCA, are repealed.

10 NEW SECTION. Section 29. Codification instruction. (1)
11 [Sections ~~26-and-27~~ 25 AND 26] are intended to be codified
12 as an integral part of Title 40, chapter 5, part 2, and the
13 provisions of Title 40, chapter 5, part 2, apply to
14 [sections ~~26-and-27~~ 25 AND 26].

15 (2) [Section ~~28~~ 27] is intended to be codified as an
16 integral part of Title 53, chapter 2, part 1, and the
17 provisions of Title 53, chapter 2, part 1, apply to [section
18 ~~28~~ 27].

19 NEW SECTION. Section 30. Severability. If a part of
20 [this act] is invalid, all valid parts that are severable
21 from the invalid part remain in effect. If a part of [this
22 act] is invalid in one or more of its applications, the part
23 remains in effect in all valid applications that are
24 severable from the invalid applications.

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE ON HOUSE BILL 335

Call to Order: By Senator Bartlett, on April 20, 1993, at
10:00 a.m.

ROLL CALL

Members Present:

Sen. Sue Bartlett, Chair (D)
Rep. John Bohlinger (R)
Rep. Liz Smith (R)
Rep. Howard Toole (D)

Members Excused: None.

Members Absent:

Sen. Steve Doherty (D)
Sen. John Harp (R)

Staff Present:

Valencia Lane, Legislative Council
Rosalyn Cooperman, Free Conference Committee Secretary

Discussion:

Senator Bartlett stated the Senate would accept the amendments offered by the House on HB 335. A number of amendments to HB 335 were offered by the House free conference Committee members (Exhibit #1).

ADJOURNMENT

Adjournment: 10:05 a.m.



Senator Sue Bartlett, Chair



Rosalyn Cooperman, Secretary

(FREE) CONFERENCE COMMITTEE

DATE 4-20-93

[illegible]

Free Conference Committee
on House Bill 335
Report No.1, April 20, 1993

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 335 and recommend as follows:

1. Title, page 2, line 4.-

Strike: "40-5-118,"

2. Page 15, line 4 through page 16, line 20.

Strike: section 8 in its entirety

Renumber: subsequent sections

3. Page 30, line 7.

Following: "obligee"

Strike: remainder of line 7 through "assistance"

4. Page 46, line 6.

Strike: "26"

Insert: "25"

5. Page 63, line 20 through page 65, line 17.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

ADOPT

April 20, 1993
Page 2 of 2

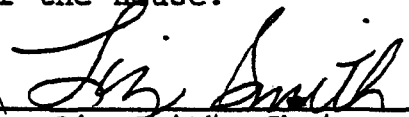
6. Page 66, line 4.
Strike: "(8)"
Insert: "(9)"

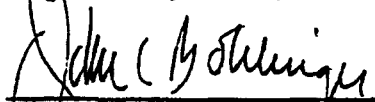
7. Page 67, lines 11 and 14.
Strike: "25 AND 26"
Insert: "24 and 25"

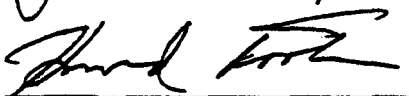
8. Page 67, lines 15 and 18.
Strike: "27"
Insert: "26"

And this Free Conference Committee report be adopted.

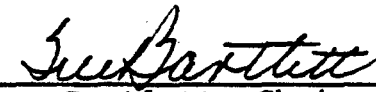
For the House:


Rep. Liz Smith, Chair


Rep. Bohlinger


Rep. Toole

For the Senate:


Sen. Bartlett, Chair


Sen. Doherty


Sen. Harp

Amendments to House Bill No. 335
Reference Reading Copy

Requested by the Free Conference Committee on HB 335

Prepared by Valencia Lane
April 20, 1993

Free Conference Committee

Exhibit # 1

Date 4-20-93

Bill No. HB 335

1. Title, page 2, line 4.

Strike: "40-5-118,"

2. Page 15, line 4 through page 16, line 20.

Strike: section 8 in its entirety

Renumber: subsequent sections

3. Page 30, line 7.

Following: "obligee"

Strike: remainder of line 23 through "assistance"

4. Page 46, line 6.

Strike: "26"

Insert: "25"

5. Page ~~62~~⁶³, line ~~21~~²⁰ through page ~~64~~⁶⁵, line ~~8~~¹⁷.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

6. Page ~~64~~⁶⁶, line ~~20~~⁴.

Strike: "(8)"

Insert: "(9)"

7. Page 67, lines 11 and 14.

Strike: "25 AND 26"

Insert: "24 and 25"

8. Page 67, lines 15 and 18.

Strike: "27"

Insert: "26"

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 335 and recommend as follows:

1. Title, page 2, line 4.
Strike: "40-5-118,"

2. Page 15, line 4 through page 16, line 20.
Strike: section 8 in its entirety
Renumber: subsequent sections

3. Page 30, line 7.
Following: "obligee"
Strike: remainder of line 7 through "assistance"

4. Page 46, line 6.
Strike: "26"
Insert: "25"

5. Page 63, line 20 through page 65, line 17.
Strike: subsections (6)(a) through (7)(c) in their entirety
Insert: "(7) A support lien is perfected:
(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;
(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;
(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.
(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

ADOPT

REJECT

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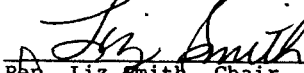
6. Page 66, line 4.
Strike: "(8)"
Insert: "(9)"

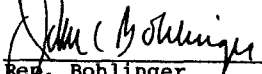
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Strike: "25 AND 26"
Insert: "24 and 25"

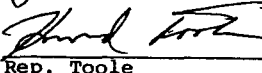
8. Page 67, lines 15 and 18.
Strike: "27"
Insert: "26"

And this Free Conference Committee report be adopted.

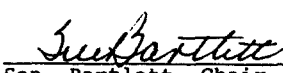
For the House:


Rep. Liz Smith, Chair

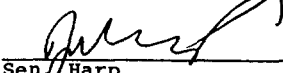

Rep. Bohlinger


Rep. Toole

For the Senate:


Sen. Bartlett, Chair


Sen. Doherty


Sen. Harp

HOUSE BILL NO. 335

INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

S. RICE, BOHLINGER, YELLOWTAIL,

WATERMAN, L. NELSON, PETERSON

BY REQUEST OF THE DEPARTMENT OF

SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; PROVIDING FOR ADDITIONAL FEES; ~~STATUTORILY-APPROPRIATING FEES-AND-PENALTIES~~; REQUIRING NOTICE TO THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY; EXTENDING SERVICES TO CHILDREN OVER AGE 18; ~~REQUIRING PRIVATE-INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE CERTAIN--INFORMATION~~; ALLOWING CHILD SUPPORT PAYMENTS TO FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY PERIODS; AMENDING SECTIONS ~~17-7-502~~, 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, ~~40-5-110~~, 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224, 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255, 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

WHEREAS, it is necessary to draft a composite bill containing unrelated sections in order to present the proposed program improvements in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

THEREFORE, the Legislature finds it appropriate to enact the following legislation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. ~~Section 17-7-502, MCA, is amended to read:~~

~~"17-7-502. Statutory appropriations-----definition-- requisites-for-validity--(1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial~~

1 legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be
3 effective, a statutory appropriation must comply with both
4 of the following provisions:

5 (a) The law containing the statutory authority must be
6 listed in subsection (3).

7 (b) The law or portion of the law making a statutory
8 appropriation must specifically state that a statutory
9 appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing
11 statutory appropriations: 2-9-202, 2-17-105, 2-18-012,
12 10-3-203, 10-3-312, 10-3-314, 10-4-301, 13-37-304, 15-1-111,
13 15-23-706, 15-25-123, 15-31-702, 15-36-112, 15-37-117,
14 15-65-121, 15-70-101, 16-1-404, 16-1-410, 16-1-411,
15 17-3-212, 17-5-404, 17-5-424, 17-5-704, 17-5-804, 17-6-409,
16 17-7-304, 19-5-404, 19-6-709, 19-8-504, 19-9-702, 19-9-1007,
17 19-10-205, 19-10-305, 19-10-506, 19-11-512, 19-11-513,
18 19-11-606, 19-12-301, 19-13-604, 19-15-101, 20-4-109,
19 20-6-406, 20-8-111, 20-9-361, 20-26-1503, 22-3-011,
20 23-5-136, 23-5-306, 23-5-409, 23-5-610, 23-5-612, 23-5-631,
21 23-7-301, 23-7-402, 27-12-206, 37-43-204, 37-51-501,
22 39-71-2504, 40-5-210, 40-5-226, 44-12-206, 44-13-102,
23 53-6-150, 53-24-206, 61-5-121, 67-3-205, 75-1-1101,
24 75-5-507, 75-5-1108, 75-11-313, 76-12-123, 77-1-808,
25 80-2-103, 80-11-310, 82-11-136, 82-11-161, 85-1-220,

1 90-3-301, 90-4-215, 90-6-331, 90-7-220, and 90-9-306.

2 (4) There is a statutory appropriation to pay the
3 principal, interest, premiums, and costs of issuing, paying,
4 and securing all bonds, notes, or other obligations as due,
5 that have been authorized and issued pursuant to the laws of
6 Montana, Agencies that have entered into agreements
7 authorized by the laws of Montana to pay the state
8 treasurer, for deposit in accordance with 17-2-101 through
9 17-2-107, as determined by the state treasurer, an amount
10 sufficient to pay the principal and interest as due on the
11 bonds or notes have statutory appropriation authority for
12 the payments. (In subsection (3), pursuant to sec. 7, Ch.
13 567, B, 1991, the inclusion of 19-6-709 terminates upon
14 death of last recipient eligible for supplemental benefit,
15 and pursuant to sec. 10, Ch. 740, B, 1991, the inclusion of
16 22-3-011 terminates June 30, 1993.)"

17 Section 1. Section 25-9-301, MCA, is amended to read:

18 "25-9-301. Docketing of judgment -- lien -- expiration.

19 (1) Immediately after the entry of the judgment in the
20 judgment book, the clerk must make the proper entries of the
21 judgment under appropriate heads in the docket kept by him
22 the clerk.

23 (2) From the time the judgment is docketed, it becomes
24 a lien upon all real property of the judgment debtor not
25 exempt from execution in the county, owned by him the

judgment debtor at the time or which he the judgment debtor
may afterward acquire until the lien ceases. The Except as
provided in subsection (3), the lien continues for 6 years
unless the judgment be is previously satisfied.

(3) When the judgment is for the payment of child or
spousal support, the lien continues for 10 years from the
termination of the support obligation unless the judgment is
previously satisfied."

Section 2. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another
county -- lien -- expiration. (1) A transcript of the
original docket, certified by the clerk, may be filed with
the district court clerk of any other county; and from the
time of the filing, the judgment becomes a lien upon all
real property of the judgment debtor, not exempt from
execution, in such that county, owned by him the judgment
debtor at the time or which he the judgment debtor may
afterward and before the lien expires acquire. The Except as
provided in subsection (2), the lien continues for 6 years
unless the judgment be is previously satisfied.

(2) When the judgment is for the payment of child or
spousal support, the lien continues for 10 years from the
termination of the support obligation unless the judgment is
previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal
court -- lien -- expiration. (1) A transcript of the
original docket of any judgment rendered in the circuit or
district court of the United States, ninth circuit, district
of Montana, certified by the clerk of said court, may be
filed with the district court clerk of any county; and from
the time of the filing, the judgment becomes a lien upon all
real property of the judgment debtor, not exempt from
execution, in such the county, owned by him the judgment
debtor at the time or which he the judgment debtor may
afterward and before the lien expires acquire. The Except as
provided in subsection (2), the lien shall---continue
continues for 6 years unless the judgment be is previously
satisfied.

(2) When the judgment is for the payment of child or
spousal support, the lien continues for 10 years from the
termination of the support obligation unless the judgment is
previously satisfied."

Section 4. Section 25-13-101, MCA, is amended to read:

"25-13-101. Time limit for issuing execution. (1) The
Except as provided in subsection (2), the party in whose
favor the judgment is given may, at any time within 6 years
after the entry thereof, have a writ of execution issued for
its enforcement.

(2) When the judgment is for the payment of child or

spouse's support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation, have a writ of execution issued for its enforcement."

Section 5. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) The Except as provided in subsection (3), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is deemed considered, in such that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child or-spouse's support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation."

Section 6. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the

action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. If a support

obligation has been entered, an action must be brought within 10 years of the termination of support obligation."

Section 7. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and his the child's educational and medical needs;
- (e) the financial resources and needs of the noncustodial parent;
- (f) the age of the child;
- (g) the cost of day care for the child;
- (h) any custody arrangement that is ordered or decided upon; and
- (i) the needs of any person, other than the child, whom

either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

- (a) If either party has available through an employer

or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in

the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under

subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order

establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) Child support ordered on behalf of a minor child must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid to:

(a)(I) the legal custodian of the minor child;

(b)--(i)(II) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(ii)(B) the court for the benefit of the minor child;

(c)(III) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d)(IV) any assignee or other person, organization, or agency authorized to receive or collect child support.

(B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE PROVISION REQUIRED BY SUBSECTION (9)(A) IS SUBJECT TO THE

1 REQUIREMENTS OF SUBSECTION (9)(A) WITHOUT NEED FOR AN
 2 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY
 3 FURTHER ACTION BY THE COURT."

4 **Section 8.** Section 40-5-118, MCA, is amended to read:--

5 "40-5-118. State information agency. (1) The state
 6 department of social and rehabilitation services is
 7 designated as the state information agency under this part.

8 (2) It shall:

9 (a) compile a list of the courts and their addresses in
 10 this state having jurisdiction under this part and transmit
 11 it to the state information agency of every other state
 12 which that has adopted this or a substantially similar law,
 13 and Upon the adjournment of each session of the legislature
 14 the agency shall distribute copies of any amendments to this
 15 part and a statement of their effective date to all other
 16 state information agencies.

17 (b) maintain a register of lists of courts received
 18 from other states and transmit furnish upon request copies
 19 thereof of the list promptly to every court in this state
 20 having jurisdiction under this part; and

21 (c) forward to the court in this state which has
 22 jurisdiction over the obligor or his property petitions,
 23 certificates, and copies of the reciprocal enforcement of
 24 support act it receives from courts or information agencies
 25 of other states.

1 (3) If the state information agency does not know the
 2 location of the obligor or his property in the state and no
 3 state location service is available, it shall use all means
 4 at its disposal to obtain this information, including the
 5 examination of official records in the state and other
 6 sources such as telephone directories, real property
 7 records, vital statistics records, police records, requests
 8 for the name and address from employers who are able or
 9 willing to cooperate, records of motor vehicle license
 10 offices, requests made to the tax offices both state and
 11 federal where such offices are able to cooperate, and
 12 requests made to the social security administration as
 13 permitted by the Social Security Act, as amended.

14 (4) After the deposit of three copies of the petition
 15 and certificate and one copy of the reciprocal enforcement
 16 of support act of the initiating state with the clerk of the
 17 appropriate court if the state information agency knows or
 18 believes that the prosecuting attorney is not prosecuting
 19 the case diligently, it shall inform the attorney general
 20 who may undertake the representation."

21 **Section 8.** Section 40-5-201, MCA, is amended to read:

22 "40-5-201. Definitions. As used in this part, the
 23 following definitions apply:

24 (1) "Alleged father" means a man who is alleged to have
 25 engaged in sexual intercourse with a child's mother during a

possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of

social and rehabilitation services or his the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include

but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 9. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ~~ensure--that--the--parent--or---other---person responsible--pays-for-the-care, support, or maintenance-of-a child~~ provide IV-D services if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) ~~if---the--department--is--providing--child--support~~

1 ~~enforcement-services--for--a--child--under--this--part,~~ the
 2 ~~department--becomes--trustee--of--any-cause-of-action-of-the~~
 3 ~~child-or-the-obligee-to-recover-support-due-to-the-child--or~~
 4 ~~obligee--from--the--obligor.~~ The department may bring and
 5 maintain the action in its own name or in the name of the
 6 obligee. A verified statement, filed by the department, that
 7 it is providing services is prima facie evidence of its
 8 authority to act. The department may initiate, participate
 9 in, or exercise any remedy available in a judicial or an
 10 administrative action on the same basis as any other party.

11 (3) The department has the power of attorney to act in
 12 the name of any obligee to endorse and cash any and all
 13 drafts, checks, money orders, or other negotiable
 14 instruments received by the department on behalf of a child.

15 (4) ~~For--purposes--of-prosecuting-any-civil-action,~~ the
 16 ~~department-is-a-real-party-in-interest-if--it--is--providing~~
 17 ~~child--support--enforcement--services--under--this-part.~~ The
 18 department is a party to and must be afforded notice and an
 19 opportunity to participate in any proceeding relating to
 20 paternity or to the establishment, enforcement, or
 21 modification of a support obligation, whether initiated by
 22 the obligee, the obligor, or the child. ~~No--obligee~~ A
 23 recipient of services may not act to prejudice the rights of
 24 the department while such the services are being provided.

25 (5) If child support enforcement services are being or

1 have been provided under this part, no an agreement between
 2 any obligee and any obligor either relieving an obligor of
 3 any duty of support or purporting to settle past, present,
 4 or future support obligations either as settlement or
 5 prepayment may not act to reduce or terminate any rights of
 6 the department to recover from the obligor for support debt
 7 provided unless the department has consented to the
 8 agreement in writing.

9 (6) The department may petition a court or an
 10 administrative agency for modification of any order on the
 11 same basis as a party to that action is entitled to do.

12 (7) The department is subrogated to the right of the
 13 child or obligee to maintain any civil action or execute any
 14 administrative remedy available under the laws of this or
 15 any other state to collect a support debt. This right of
 16 subrogation is in addition to and independent of the
 17 assignment under 53-2-613 and the support debt created by
 18 40-5-221.

19 (8) If public assistance is being or has been paid, the
 20 department is subrogated to the debt created by a support
 21 order and any money judgment is considered to be in favor of
 22 the department. This subrogation is an addition to any
 23 assignment made under 53-2-613 and applies to the lesser of:

- 24 (a) the amount of public assistance paid; or
- 25 (b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) When a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning the establishment or enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division."

Section 10. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any

statute making the information confidential, all state, county, and city agencies, officers, and employees and, ~~EXCEPT--AS--PROVIDED--IN--SUBSECTION--(6),~~ all corporations, partnerships, associations, organizations, or individuals doing business in the state must provide on request any information, if known, concerning ~~the location, income, and assets of~~ an obligor, including:

(a) name;

(b) address of obligor's residence;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

~~(h) name and address of any financial institution maintaining an account for the obligor;~~

~~(i) account number, account balances, account type, and the name under which the obligor has an interest in an account or deposit with a financial institution;~~

~~(j)(H)~~ address of any real property owned by the obligor; and

~~(k)(I)~~ any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.

~~{3}--Except as provided in 40-5-261--and--rules--adopted under--40-5-262,--any--records--established--pursuant-to-the provisions--of--this--section--are--available--only--to--the department, A person--who--knowingly--fails--or--refuses--to provide--information--or--who--knowingly--provides--false--or incorrect--information--concerning--an--obligor,--in--response--to a--request--by--the--department,--is--subject--to--citation--for contempt--under--the--provisions--of--this--part.~~

{4}(3) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly.

{5}(4) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

~~{6}--IF-A-FINANCIAL-INSTITUTION-DEFINED-IN-31-1-111-AS-A REGULATED--LENDER---POSSESSES---INFORMATION---DESCRIBED---IN SUBSECTION--{2}{i},--{2}{j},--OR--{2}{k}--THAT--RELATES-TO-A PERSON-WHO-IS-THE-SUBJECT-OF-AN-INQUIRY-BY--THE--DEPARTMENT, THE-FINANCIAL-INSTITUTION-NEED-ONLY-TELL-THE-DEPARTMENT-THAT IT---POSSESSES---INFORMATION---THE---DEPARTMENT---SEEKS,---THE DEPARTMENT-MAY-APPLY-FOR--AN--INVESTIGATIVE--SUBPOENA--UNDER 46-4-301,--STATING--IN-THE-PROSECUTOR'S-APPIDAVIT-IN-SUPPORT OF-THE-SUBPOENA-THAT-ASSETS-OR-RESOURCES-OF-THE--OBLIGOR--DO OR-MAY-EXIST-AND-THAT-THE-ADMINISTRATION-OF-JUSTICE-REQUIRES THE-FINANCIAL-INSTITUTION-TO-DISCLOSE-THE-INFORMATION."~~

Section 11. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support -- obligation enforcement -- sanctions. (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and

1 that the failure to do so may result in the imposition of
2 sanctions under this section.

3 (b) If the support order or modification of an order
4 does not include a provision requiring the obligor to
5 provide health insurance coverage for a child, upon notice
6 to the obligor that the child is receiving support
7 enforcement services under Title IV-D of the Social Security
8 Act, the obligor shall obtain and maintain health insurance
9 coverage as provided for in subsection (1)(a). This
10 insurance is in addition to:

11 (i) an order requiring the obligee to maintain health
12 insurance coverage;

13 (ii) an agreement that the obligee will maintain health
14 insurance coverage; or

15 (iii) a failure or omission of the court order or
16 modification of an order to require health insurance
17 coverage.

18 (2) (a) If the department is providing child support
19 enforcement services and the obligor is required by an
20 existing district court order or an administrative order
21 under this section to provide health insurance coverage for
22 a child, the department shall also enforce the health
23 insurance obligation.

24 (b) To ensure that health insurance coverage is
25 available for the child, the obligor, upon written request

1 by the department, shall provide the name of the insurance
2 carrier, the policy identification name and number, the
3 names of the persons covered, and any other pertinent
4 information regarding coverage.

5 (3) (a) The department may issue a notice commanding
6 the obligor to appear at a hearing held by the department
7 and show cause why a sum of not more than \$100 should not be
8 assessed for each month health insurance coverage is not
9 secured or maintained if the department determines an
10 obligor has failed to:

11 (i) obtain or maintain health insurance coverage as
12 required under this section; or

13 (ii) provide information required under this section.

14 (b) If the department finds, after hearing or the
15 obligor's failure to appear, that health insurance coverage
16 has not been obtained or maintained or that the obligor has
17 failed to provide the information required, the department
18 may assess against the obligor not more than \$100 for each
19 month health insurance coverage has not been obtained or
20 maintained or for each month information has not been
21 provided. ~~Such~~ The amounts may be enforced by any
22 administrative remedy available to the department for the
23 enforcement of child support obligations, including warrant
24 for distraint provided for in ~~40-5-241~~ 40-5-247 and income
25 withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 12. Section 40-5-210, MCA, is amended to read:

"40-5-210. Standardized fee schedule -- rules. (1) The department ~~shall-by-rule-establish-a--standardized--schedule of--fees--for--the--recovery--of--administrative--costs--and expenses--of--child--support--enforcement--The--fees--may--be recovered--from--an--obligor--if--the--obligor's--failure--or refusal--to--support--a--child--makes--it--necessary--for--the department--to--provide--child--support--enforcement--services under--this--part--The--fees--must--be--commensurate--with--costs--or an--average--of--the--expenditures--related--to--specific--or routine--activities~~ may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) The department may charge a handling fee for each

payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(3) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee ~~who-is-not-a-recipient-of-public-assistance.~~

(4) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b)(2) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order ~~in--which~~ whenever the department:

(i) is the a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt.

(4) Collection of a fee award may not reduce any current child support payment due the obligee.

(5) Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.

(5) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages;
or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction

for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(7) The department may adopt rules necessary to implement fee schedules under this section.

(8) The department may retain any fees collected under this section to help offset administrative costs and expenses of operating the child support enforcement program. For this purpose, the fees are statutorily appropriated as provided in 17-7-502. THE FEES AND COSTS CHARGED AND COLLECTED UNDER THIS SECTION MUST BE PAID MONTHLY INTO THE STATE TREASURY TO THE CREDIT OF THE CHILD SUPPORT ENFORCEMENT DIVISION SPECIAL REVENUE FUND AND MUST BE ACCOMPANIED BY A DETAILED STATEMENT OF THE AMOUNTS COLLECTED."

Section 13. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance -- warrant for distraint -- bond to release warrant -- action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~ or left, or has removed or is about to remove, secrete, waste, or otherwise dispose of property ~~which that~~ that could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the fair hearing or ~~thereafter~~ after the hearing, whether or not appealed. ~~No-further~~ Further action may not be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or ~~thereafter~~ after the hearing, and in such that case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the

date of issuance of the decision resulting from the hearing."

Section 14. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such the~~ the determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in

1 accordance with the evidence presented and with reference to
2 the scale of suggested minimum contributions under 40-5-214.
3 The hearing officer is not limited to the amounts stated in
4 the notice.

5 (7) Within 20 days of the hearing, the hearing officer
6 shall enter a final decision and order. The determination of
7 the hearing officer constitutes a final agency decision,
8 subject to judicial review under 40-5-253 and the provisions
9 of the Montana Administrative Procedure Act.

10 (8) A support order entered under this part must
11 contain a statement that the order is subject to review and
12 modification by the department upon the request of the
13 department or a party under 40-5-271 through 40-5-273 when
14 the department is providing services under IV-D for the
15 enforcement of the order.

16 (9) A support debt determined pursuant to this section
17 is subject to collection action without further necessity of
18 action by the hearing officer.

19 (10) A support debt or a support responsibility
20 determined under this part by reason of the obligor's
21 failure to request a hearing under this part or failure to
22 appear at a scheduled hearing may be vacated, upon the
23 motion of an obligor, by the hearing officer within the time
24 provided and upon a showing of any of the grounds enumerated
25 in the Montana Rules of Civil Procedure.

1 (11) Unless the hearing officer makes a written
2 exception under 40-5-315 or 40-5-411 and the exception is
3 included in the support order, every order establishing a
4 child support obligation, whether temporary or final, and
5 each modification of an existing child support order under
6 this part is enforceable by immediate or delinquency income
7 withholding, or both, under Title 40, chapter 5, part 4. A
8 support order that omits that provision or that provides for
9 a payment arrangement inconsistent with this section is
10 nevertheless subject to withholding for the payment of
11 support without need for an amendment of the support order
12 or for any further action by the hearing officer.

13 (12) For the purposes of income withholding provided for
14 in subsection (11), whenever the department establishes or
15 modifies a child support obligation, the department's order
16 must include a provision requiring the obligor, for as long
17 as the department is providing support enforcement services,
18 to keep the department informed of the name and address of
19 the obligor's current employer, whether the obligor has
20 access to health insurance through an employer or other
21 group, and, if so, the health insurance policy information.

22 (13) The hearing officer may:

23 (a) compel obedience to the hearing officer's orders,
24 judgments, and process and to any orders issued by the
25 department, including income-withholding orders issued

1 pursuant to 40-5-415;

2 (b) compel the attendance of witnesses at
3 administrative hearings;

4 (c) compel obedience of subpoenas for paternity blood
5 tests;

6 (d) compel the production of accounts, books,
7 documents, and other evidence; and

8 (e) punish for civil contempt. Contempt authority does
9 not prevent the department from proceeding in accordance
10 with the provisions of 2-4-104.

11 (14) A contempt occurs whenever:

12 (a) a person acts in disobedience of any lawful order,
13 judgment, or process of the hearing officer or of the
14 department;

15 (b) a person compelled by subpoena to appear and
16 testify at an administrative hearing or to appear for
17 genetic paternity tests fails to do so;

18 (c) a person compelled by subpoena duces tecum to
19 produce evidence at an administrative hearing fails to do
20 so;

21 (d) an obligor or obligee subject to a discovery order
22 issued by the hearing officer fails to comply with discovery
23 requests; or

24 (e) a payor under an order to withhold issued pursuant
25 to 40-5-415 fails to comply with the provisions of the

1 order. In the case of a payor under an income-withholding
2 order, a separate contempt occurs each time income is
3 required to be withheld and paid to the department and the
4 payor fails to take the required action.

5 (15) An affidavit of the facts constituting a contempt
6 must be submitted to the hearing officer, who shall review
7 it to determine whether there is cause to believe that a
8 contempt has been committed. If cause is found, the hearing
9 officer shall issue a citation requiring the alleged
10 contemnor to appear and show cause why the alleged contemnor
11 should not be determined to be in contempt and required to
12 pay a penalty of not more than \$500 for each count of
13 contempt. The citation, along with a copy of the affidavit,
14 must be served upon the alleged contemnor either by personal
15 service or by certified mail. All other interested persons
16 may be served a copy of the citation by first-class mail.

17 (16) At the time and date set for hearing, the hearing
18 officer shall proceed to hear witnesses and take evidence
19 regarding the alleged contempt and any defenses to the
20 contempt. If the alleged contemnor fails to appear for the
21 hearing, the hearing may proceed in the alleged contemnor's
22 absence. If the hearing officer finds the alleged contemnor
23 in contempt, the hearing officer may impose a penalty of not
24 more than \$500 for each count found. The hearing officer's
25 decision constitutes a final agency decision, subject to

judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

~~(18) The money collected as a penalty under this section is statutorily appropriated, as provided in 17-7-502, to the department--to--help--offset--expenditures--for--administrative hearings--conducted--under--this--chapter~~ THE PENALTIES CHARGED AND COLLECTED UNDER THIS SECTION MUST BE PAID INTO THE STATE TREASURY TO THE CREDIT OF THE CHILD SUPPORT ENFORCEMENT DIVISION SPECIAL REVENUE FUND AND MUST BE ACCOMPANIED BY A DETAILED STATEMENT OF THE AMOUNTS COLLECTED."

Section 15. Section 40-5-227, MCA, is amended to read:

"40-5-227. Filing and docketing of final orders -- orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be

docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for any such a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to ~~40-5-241~~ 40-5-247."

Section 16. Section 40-5-232, MCA, is amended to read:

"40-5-232. Establishment of paternity -- notice of paternity determination -- contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102

1 and is subject to the provisions of Title 2, chapter 4,
2 except as otherwise provided in 40-5-231 through 40-5-237.

3 (2) It is presumed to be in the best interest of a
4 child to legally determine and establish his paternity. A
5 presumption under this subsection may be rebutted by a
6 preponderance of the evidence.

7 (3) In any proceeding under 40-5-231 through 40-5-237,
8 if a man acknowledges his paternity of a child in writing
9 and such the acknowledgment is filed with the department,
10 the department may enter an order establishing legal
11 paternity. An acknowledgment is binding on a parent who
12 executes it, whether or not he the parent is a minor.

13 (4) The department shall commence proceedings to
14 establish paternity by serving on an alleged father a notice
15 of paternity determination. The department may not serve
16 such the notice unless it has:

17 (a) a sworn statement from the child's mother claiming
18 that the alleged father is the child's natural father;

19 (b) evidence of the existence of a presumption of
20 paternity under 40-6-105; or

21 (c) any other reasonable cause to believe that the
22 alleged father is the child's natural father.

23 (5) Service on the alleged father of the notice of
24 paternity determination ~~shall~~ must be made as provided in
25 40-5-231(2). The notice must include:

1 (a) an allegation that the alleged father is the
2 natural father of the child involved;

3 (b) the child's name and place and date of birth;

4 (c) the name of the child's mother and the name of the
5 person or agency having custody of the child, if other than
6 the mother;

7 (d) the probable time or period of time during which
8 conception took place;

9 (e) a statement that if the alleged father fails to
10 timely deny the allegation of paternity, the question of
11 paternity may be resolved against him the alleged father
12 without further notice;

13 (f) a statement that if the alleged father timely
14 denies the allegation of paternity:

15 (i) he the alleged father is subject to compulsory
16 blood testing;

17 (ii) a blood test may result in a presumption of
18 paternity; and

19 (iii) ~~he may request a trial in district court to~~
20 ~~determine paternity before the final administrative decision~~
21 is made upon receipt of the blood test results, if the
22 alleged father continues to deny paternity, the alleged
23 father may request the department to refer the matter to
24 district court for a determination of paternity.

25 (6) The alleged father may file a written denial of

1 paternity with the department within 20 days after service
2 of the notice of paternity determination.

3 (7) When there is more than one alleged father of a
4 child, the department may serve a notice of paternity
5 determination on each alleged father in the same
6 consolidated proceeding or in separate proceedings. Failure
7 to serve notice on an alleged father does not prevent the
8 department from serving notice on any other alleged father
9 of the same child."

10 **Section 17.** Section 40-5-242, MCA, is amended to read:

11 **"40-5-242. ~~Civil~~ Notice of support lien -- civil**
12 **liability upon failure to honor support lien or to comply**
13 **with warrant or-to-honor-assignment-of-wages for distraint.**

14 **(1) The department may, at any time after asserting a**
15 **support lien, serve a notice of the lien on any person,**
16 **firm, corporation, association, or political subdivision or**
17 **department of the state in possession of any real or**
18 **personal property that is due, owing, or belonging to an**
19 **obligor. For this purpose, personal property includes the**
20 **obligor's share of a decedent's estate, workers'**
21 **compensation benefits, and any proceeds or potential**
22 **proceeds from suits at law.**

23 **(2) Except as provided in subsection (3), A a person,**
24 **firm, corporation, association, political subdivision, or**
25 **department of the state or entity is liable to the**

1 department in an amount equal to 100% of the value of the a
2 support debt--that--is--the--basis--of--the--distraint--or
3 assignment-of-wages lien or warrant for distraint or the
4 value of the-distrainted real or personal property subject to
5 a support lien or distraint by a warrant for distraint,
6 whichever is less, together with costs, interest, and
7 reasonable attorney fees, if the person or entity:

8 (1)--fails-or-refuses-to-deliver--property--pursuant--to
9 the-order;

10 (2)(a) pays over, releases, sells, transfers, or
11 conveys real or personal property subject to a support lien,
12 to or for the benefit of the obligor, after the person or
13 entity receives actual notice of filing of the support lien;
14 or

15 (3)(b) fails or refuses to surrender upon demand
16 property distrainted--under--40-5-241 of an obligor when
17 presented with a warrant for distraint by a sheriff or
18 levying officer under the provisions of 40-5-247;--or.

19 (4)--fails--or--refuses--to-honor-an-assignment-of-wages
20 presented-by-the-department;

21 (3) A person or entity is not liable to the department
22 under this section when:

23 (a) a written release or waiver of the support lien or
24 warrant for distraint issued by the department has been
25 delivered to the person or entity;

1 (b) a determination has been made in an adjudicative
 2 proceeding, either administrative or judicial, that a
 3 support lien does not exist or that the lien has been
 4 satisfied; or

5 (c) the property subject to a support lien has been
 6 transferred to, paid over to, or repossessed by a person or
 7 entity holding:

8 (i) a prior perfected lien;

9 (ii) a mortgage, the proceeds of which were used by the
 10 obligor to purchase real property; or

11 (iii) a perfected purchase money security interest, as
 12 defined by 30-9-107."

13 **Section 18.** Section 40-5-247, MCA, is amended to read:

14 "40-5-247. Filing-warrant-with-district-court---effect
 15 of-filing---release Warrant for distraint -- effect --
 16 satisfaction of support lien -- redemption. {1}--After
 17 issuing--a-warrant, the department may file the warrant with
 18 the clerk of a district court. The clerk shall file the
 19 warrant in the judgment docket, with the name of the
 20 delinquent obligor listed as the judgment debtor.

21 {2}--Upon filing the warrant, there is a lien against
 22 all real and personal property of the delinquent obligor
 23 located in the county where the warrant is filed. The
 24 resulting lien is treated in the same manner as a properly
 25 docketed judgment lien, and the department may collect

1 delinquent--child--support--and enforce the lien in the same
 2 manner as a judgment is enforced. The lien is for the amount
 3 indicated on the warrant plus accrued interest from the date
 4 of the warrant.

5 (1) The department may issue a warrant for distraint to
 6 execute support liens established by [section 20 27 26 25]
 7 or to enforce and collect any money obligation authorized
 8 under this chapter.

9 (a) The warrant must be an order, under official seal
 10 of the department, directed to a sheriff of any county of
 11 the state or to any levying officer authorized by law to
 12 enforce a district court judgment. The order must command
 13 the recipient to levy upon and sell nonexempt real and
 14 personal property to satisfy the support lien upon which the
 15 warrant is based.

16 (b) A warrant must be signed by the director of the
 17 department or the director's designee.

18 (c) The warrant must be for the amount of the support
 19 lien or the amount of any other money obligation determined
 20 under this chapter, including interest and fees, if any.

21 (d) A warrant for distraint has the same effect as a
 22 writ of execution issued by a district court to enforce
 23 money judgments.

24 {3}{2} (a) A copy of the filed warrant for distraint
 25 may be sent by the department to the sheriff or authorized

1 agent levying officer. Upon receipt of ~~a copy of~~ the filed
2 warrant, the sheriff or authorized agent levying officer
3 shall proceed to execute upon the warrant in the same manner
4 as prescribed for execution upon a judgment.

5 (b) A sheriff or agent levying officer shall return a
6 warrant, along with any funds collected, within 90 days of
7 the receipt of the ~~copy of the~~ warrant.

8 (c) Funds resulting from execution upon the warrant
9 must first be applied to the sheriff's or levying officer's
10 costs, any superior liens, the support lien, or other money
11 obligation and to any inferior liens. Any amounts in excess
12 of this distribution must be paid to the obligor.

13 ~~(c)(d)~~ If the warrant is returned not fully satisfied,
14 the department has the same remedies to collect the
15 deficiency as are available for any civil judgment.

16 (3) A sheriff's or levying officer's levy against real
17 and personal property of the obligor is not limited to
18 property in possession of persons or other entities given
19 notice of a support lien under 40-5-242.

20 (4) (a) Upon receiving payment in full of the unpaid
21 child-support warrant amount plus penalty and fees, if any,
22 and accumulated interest, the department shall release the
23 lien warrant.

24 (b) Upon receiving partial payment of the unpaid child
25 support warrant amount or if the department determines that

1 a release or partial release of the lien warrant will
2 facilitate the collection of the unpaid amount, penalty, and
3 interest, the department may release or may partially
4 release the lien--acquired--by--filing--the warrant for
5 distraint. The department may release the lien warrant if it
6 determines that the lien warrant is unenforceable.

7 (5) An obligor or other person or entity having an
8 interest in real or personal property levied upon by a
9 warrant for distraint at any time prior to sale of the
10 property may pay the amount of the support lien or other
11 money obligation and any costs incurred by the sheriff or
12 levying officer serving the warrant. Upon payment in full,
13 the property must be restored to the obligor or other person
14 and all proceedings on the warrant must cease.

15 (6) An obligor or other person or entity having an
16 interest in real property levied upon and sold by a sheriff
17 or levying officer pursuant to a warrant for distraint may,
18 within 240 days after sale of the property, redeem the
19 property by making payment to the purchaser in the amount
20 paid by the purchaser plus interest at the statutory
21 interest rate payable on judgments recovered in the district
22 court.

23 (7) At any time after distraint of property under a
24 warrant for distraint, the department may release all or
25 part of the seized property without liability if payment of

the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(5)(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 19. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) ~~At any time after 6-years-from-the-date--a--support debt--was--incurred~~ 10 years from the date of termination of the support obligation, the department may charge off as

uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. ~~No-proceedings A proceeding~~ or action under the provisions of this part may ~~not~~ be begun after expiration of the ~~6-year~~ 10-year period to institute collection of a support debt. ~~Nothing--herein~~ This part may ~~not~~ be construed to render invalid or nonactionable a warrant for distraint ~~filed-with-the-clerk of-court~~ issued by the department prior to the expiration of the ~~6-year~~ 10-year period or an assignment of earnings executed prior to the expiration of the ~~6-year~~ 10-year period."

Section 20. Section 40-5-415, MCA, is amended to read:

"40-5-415. Order to withhold income -- rules. (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until

further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules."

Section 21. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at

variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily ~~shall~~ must be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this

section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent,

without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 22. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for

the enforcement of judgments apply.

(3) Child--support--ordered--on-behalf-of-a-minor-child must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid to:

(a)(I) the legal custodian of the minor child;

(b)--(i)(II) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(i)(B) the court for the benefit of the minor child;

(c)(III) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d)(IV) any assignee or other person, organization, or agency authorized to receive or collect child support.

(B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE PROVISION REQUIRED BY SUBSECTION (3)(A) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION (3)(A) WITHOUT NEED FOR AN AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY FURTHER ACTION BY THE COURT."

Section 23. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance,

including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application ~~shall~~ must be submitted, in the manner and form prescribed by the department of social and rehabilitation services, and ~~shall~~ must contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the

department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If ~~such~~ the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No A recipient or former recipient of public assistance may not commence or maintain an action to recover a delinquent support obligation without notifying the department department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are

1 satisfied or released.

2 (d) No A recipient or former recipient of public
3 assistance may not take action to modify or make any
4 agreement to modify, settle, or release any past, present,
5 or future support obligation unless the department
6 department's child support enforcement division is given
7 written notice and an opportunity to participate. Any
8 modifications or agreements entered into without the
9 participation of the department are void with respect to the
10 state, the department ~~of-social-and-rehabilitation-services~~,
11 and the county welfare department."

12 NEW SECTION. Section 24. Child support payments to
13 follow the child. Child-support-ordered-on-behalf-of-a-minor
14 child-must (1) A SUPPORT ORDER ISSUED OR MODIFIED UNDER THIS
15 PART MUST CONTAIN A PROVISION REQUIRING THE CHILD SUPPORT TO
16 be paid to:

17 (1)(A) the legal custodian of the minor child;

18 (2)--(a)(B) (I) any other person, organization, or
19 agency having legal physical custody of the minor child or
20 collecting child support on behalf of the minor child under
21 a legal assignment of rights; or

22 (b)(II) the court for the benefit of the minor child;

23 (3)(C) any other person or agency designated as
24 caretaker of the minor child by agreement of the legal
25 custodian; or

1 (4)(D) any assignee or other person, organization, or
2 agency authorized to receive or collect child support.

3 (2) AN ORDER THAT OMITS THE PROVISION REQUIRED BY
4 SUBSECTION (1) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION
5 (1) WITHOUT NEED FOR AN AMENDMENT TO THE ORDER OR FOR ANY
6 FURTHER ACTION BY THE DEPARTMENT.

7 NEW SECTION. Section 25. Lien against real and
8 personal property -- effect of lien -- interest -- warrant
9 for distraint. (1) There is a support lien on the real and
10 personal property of an obligor:

11 (a) when the department has entered a final decision in
12 a contested case under this chapter that finds the obligor
13 owes a sum certain debt either to this department or to an
14 obligee, or both; or

15 (b) upon registration under 40-5-271 of a support order
16 that includes finding that the obligor owes a sum certain
17 amount of delinquent support.

18 (2) A support lien is for the amount required to
19 satisfy:

20 (a) the sum certain debt shown in a final decision in a
21 contested case under this chapter or the sum certain support
22 debt included in any support order registered under
23 40-5-271;

24 (b) interest claimed under this section; and

25 (c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(a) Except as provided by subsection (7) for motor vehicle liens, a support lien is perfected upon filing the lien with the department's registry.

(b) The department shall make information about a support lien available to any interested person or entity AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL

ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

(c) A support lien filed with the department's registry constitutes constructive notice to a purchaser of real property from an obligor.

(d) Except as provided by subsection (7), a lien against an obligor's personal property is not effective against any person, firm, corporation, association, political subdivision, or agency of the state in possession of the obligor's personal property until the department serves a notice of the lien to the person or entity.

(e) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT LIEN.

(7) A support lien may be asserted against any motor vehicle, as defined in 61-1-102, as follows:

(a) When an obligor is the owner of a motor vehicle, the department may SHALL give notice of the support lien to the department of justice as provided in 61-3-103(6). A notice of support lien filed with the department of justice constitutes constructive notice of the lien to subsequent purchasers or encumbrancers of a motor vehicle from the obligor, commencing from the date the notice is delivered to the department of justice.

(b) (i) To assert a support lien on motor vehicles of

which an obligor may later acquire ownership, the department may, each month, prepare and submit to the department of justice a list of obligors against whom there is a support lien. The list must identify each obligor by name, last known address, amount of lien, social security number, if known, and any other identifying information needed by the department of justice to identify the obligor.

(ii) The department of justice shall, before issuing a certificate of ownership for any motor vehicle, determine whether the name of the person applying for the certificate is on the most recent monthly support lien list. If the person's name is on the list, the department of justice shall enter a lien on the certificate of ownership under the name of the department as lienholder.

(c) The department shall reimburse the department of justice for reasonable costs incurred by the department of justice in implementing this subsection (7).

(7) A SUPPORT LIEN IS PERFECTED:

(A) AS TO REAL PROPERTY, UPON FILING A NOTICE OF SUPPORT LIEN WITH THE CLERK OF THE DISTRICT COURT IN THE COUNTY OR COUNTIES IN WHICH THE REAL PROPERTY IS OR MAY BE LOCATED AT THE TIME OF FILING OR AT ANY TIME IN THE FUTURE;

(B) AS TO MOTOR VEHICLES OR OTHER ITEMS FOR WHICH A CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT OF JUSTICE, UPON FILING A NOTICE OF SUPPORT LIEN WITH THE

DEPARTMENT OF JUSTICE IN ACCORDANCE WITH THE PROVISIONS OF TITLES 23 AND 61;

(C) AS TO ALL OTHER PERSONAL PROPERTY, UPON FILING A NOTICE OF SUPPORT LIEN IN THE PLACE REQUIRED TO PERFECT A SECURITY INTEREST UNDER 30-9-401, THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE, AS APPROPRIATE, SHALL CAUSE THE NOTICE OF SUPPORT LIEN TO BE MARKED, HELD, AND INDEXED AS IF THE NOTICE OF SUPPORT LIEN WERE A FINANCING STATEMENT WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE.

(8) A BUYER FOR VALUE OF AN OBLIGOR'S PERSONAL PROPERTY, OTHER THAN MOTOR VEHICLES AND OTHER ITEMS FOR WHICH A CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT OF JUSTICE, WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT LIEN.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would

facilitate the collection of the debt.

(d) Interest under this subsection ~~(8)~~ (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

~~(9)~~(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

~~(10)~~(11) A support lien under this section is in addition to any other lien created by law.

~~(11)~~(12) A support lien under this section may not be discharged in bankruptcy.

~~(12)~~(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

NEW SECTION. Section 26. Payment of debts to department. If money is due and owing the department, a payment due under Title 40, chapter 5, part 2 or 4, or under this chapter that is accompanied by or bears any notation by

the debtor that the payment represents payment in full is not full payment, notwithstanding the department's acceptance of the payment, unless there is additional written agreement, signed by the department, that the payment is payment in full.

NEW SECTION. Section 27. Repealer. Sections 40-5-241, 40-5-245, and 40-5-246, MCA, are repealed.

NEW SECTION. Section 28. Codification instruction. (1) [Sections ~~26-and-27~~ 25-AND-26 24 AND 25] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections ~~26-and-27~~ 25-AND-26 24 AND 25].

(2) [Section ~~28~~ 27 26] is intended to be codified as an integral part of Title 53, chapter 2, part 1, and the provisions of Title 53, chapter 2, part 1, apply to [section ~~28~~ 27 26].

NEW SECTION. Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-